

THE EXECUTIVE IN AFRICAN GOVERNMENTS
(A COMPARATIVE ~~CONSTITUTIONAL~~ STUDY)

By

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A Thesis submitted for
the Degree of Ph. D. in
the University of London.

London,
June, 1967.

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Abstract

My interest to undertake the study leading to this thesis was first aroused in May 1963, during the first meeting of the African Heads of States which established the OAU. Further inquiries revealed a political phenomenon that has been called African presidentialism. The advent of one-party government which was the basis of African presidentialism has been complicated by the intervention of the military in politics, or ^{by} threats of such intervention. A comparative study of African constitutions focused on the Executive was therefore, I felt, worth undertaking.

The scope and purpose of the thesis is to examine the structure and organisation of the Executive in a comparative setting. The thesis is divided into four parts. The introductory part (Part One) aims to provide a historical and socio-political background to the study. Part Two deals with the various Executive forms in Africa: Chapter three deals with the monarchies, Chapter four with dual executive systems, and Chapter five with executive presidencies. The commonest system is that of the executive presidency; accordingly, Chapter five is considered to be the central part of the thesis. Executive presidency (for African presidentialism) rests on the twin pillars of the

one-party and on the civil service. Hence part three deals with an account of these two institutions in Africa.

The last part deals with the advent of the military in Africa. Some of the major causes of coups d'état are examined together with some case studies (chapter eight). This is followed by brief accounts of selected military regimes considered as Executives.

Acknowledgements

My thanks are due to Professor A.N. Allott who supervised this work. His keen interest has been a source of encouragement, and his criticisms have been stimulating. I must also express my gratitude to Mr. Neville Rubin for his help throughout the period of research.

Many people helped in providing me with material and information relevant to the thesis. Officials of African embassies in London and Paris spent valuable time in providing such help; discussing some sensitive questions, as a result of which I gained some insights into the actual working of the Executive, in Africa. I wish to extend my deep gratitude to all these people whose names I cannot mention.

I am also greatly indebted to the following: the library staff of the Institute of Advanced Legal Studies, the University of London; the library staff of the Commonwealth Relations office; the Institut de l'Administration Publique, Paris; the Secrétariat Générale du Gouvernement Direction de la Documentation, Paris; and the Institut Universitaire de Hautes Études Internationales, Genève; and last, but not least, Mrs. V. Williams for the efficiency of her typing services.

This study was made possible through a generous grant (1) of a research fellowship of the Institute of

Advanced Legal Studies (1965-66); and (2nd) of a British Council scholarship (1966-67), for both of which I am deeply grateful.

My thanks are also due to Professor James C.N. Paul, Vice-President of Haile Selassie I University, and former Dean of the Law School, for his help in extending my leave of absence from the Law School, in the face of pressure.

Most important, I am grateful to my family who have had to suffer a long separation, and who, far from complaining, have been a constant source of encouragement from afar.

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List of Abbreviations

ALN	= Armée de Libération Nationale
AEF	= Afrique Equatoriale Française
ANC	= Armée Nationale Congolaise
AOF	= Afrique Orientale Française
CONACO	= Congrès National du Congo
CONAKAT	= Congrès National de Katanga
CPP	= Convention People's Party
CUT	= Comité de l'Union Togolaise
FLN	= Front de Liberation Nationale
KANU	= Kenya African National Union
MCP	= Malawi Congress Party
MPRC	= Movement Populaire de la République Congolaise
NCNC	= National Council of Nigerian Citizens
NEC	= National Executive Committee
NLC	= National Libération Council
NLDC	= National Liberation Council Decree
NPC	= Northern Peoples' Congress
OAU	= Organisation of African Unity.
OEBA	= Organisation Clandestine de la Révolution Algérienne
ORP	= Organisation de la Resistance Populaire
PDCT	= Parti Démocratique de la Côte d'Ivoire
PDG	= Parti Démocratique de la Guinée
TANU	= Tanzania African National Union
UAR	= United Arab Republic
UPS	= Union Progréssiste Sénégalaise
US-R.D.A.	= Union Soudanaise - Rassemblement Démocratique Africain

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PART ONE

INTRODUCTION

CHAPTER ONE
GENERAL INTRODUCTION

1. The Scope of the present study.

A study of the Executive could be made from at least two points of view. One may be concerned with an examination of the structure and organisation, another with the dynamics of the Executive in terms of its functioning in relation to other institutions. In the ultimate analysis, however, it is not possible to separate the two; for, the structural aspect of a system can only be meaningful when seen through its operation. Structure partly determines function, in the same way that law affects conduct. Much of peoples' conduct is influenced by pre-existing institutional structures to which they are used (sometimes even where some of these had outlived their usefulness). This is so because there are norms and values inherent in structural relationships which habitually guide or control behaviour. Man is a creature of habit, and behavioural relationship is implicit in institutional functioning. Therefore a study of function needs a structural point of departure as structure must be analysed in terms of functional implication.

The present study proceeds on this assumption, combining the two approaches. Part Two deals with the formal constitutional position of the Executive. It offers a description

and analysis of the status and functions of the Executive in all independent African states which have a civilian government. This part is divided into three chapters: the monarchies (Chapter Three), the dual Executive systems, with a figure-head of state (Chapter Four), and Executive presidencies (Chapter Five).

The survival of some monarchies, and indeed the advent of neo-traditionalism in some African countries in the face of radical movements towards what has been called African presidentialism is a subject of great interest. Some of the monarchies have shown a capacity for adaptation. The move towards an autocratic type of government in the presidential systems and the capacity for adaptation shown by some monarchies would indeed seem to show a process of mutual influence on the part of African monarchy and African presidentialism, as we shall try to show. This is neither a defence of the monarchy nor an attack on African presidentialism, as such. The principal object of Chapter Three is to describe the position and power of the remaining monarchies in a constitutional setting and by reference to this, in later chapters, to draw comparisons between them and the presidential Executive in African governments. It is not my concern for

1. It is sufficient to say at this stage that King Hassan of Morocco, for example, acts as a kind of a hereditary president, while President Houphouet Boigny of the Ivory Coast is a sort of an elected monarch.

the purpose of this study, to deal with the question whether monarchies are desirable as systems or whether they are archaic and unsuitable for this day and age.

In the discussion on the dual (bicephalous) Executive, some explanations are offered which may account for the presence of a bicephalous executive in the three states - Gambia, Lesotho and Somalia. The main theses of Chapter Four are that (i) a bicephalous executive was devised by the framers of the constitution as a compromise between opposing forces - mainly between traditional forces and modern (nationalist) parties; (ii) where the arrangement had built in within the constitutional framework bitterly opposed political forces it would soon lead to a break up of the system. Such a weakening arrangement can be the cause for military intervention in politics, although by no means the only cause.

Chapter Five is the central part of the study. The unitary (monocephalous) Executive presidency has been the characteristic trend since the years of independence. A discussion of the Executive presidents in Africa must, therefore, inquire into, among other things, the institutional antecedent of the new Executive presidencies established in Africa. It must, further, inquire into the constitutional position of the president including his accession to and tenure of office, and his powers and responsibilities. It must, in particular, try to identify some of the most significant features which distinguish African presidentialism

from other types of Executives. Chapter ~~Four~~^{Five} is an attempt to do all this. Moreover, the notion of African presidentialism which implies centralised, concentrated and personalised power operating within a one party or a dominant party system, is examined critically in the same chapter, briefly and in a constitutional context.

Part Three of the study introduces another dimension. It is entitled 'The Dynamics of Executive Power', and the Executive is discussed in terms of its relation to two other institutions, viz. the public service and the political party. These two institutions are selected because both are crucial to the position and function of the Executive as indeed to other aspects of the national life. The discussion on African presidentialism started in Chapter Five in a constitutional context is carried over to Part Three and seen in a different perspective - in terms of the dynamics of its power relationship with the public service and the political party.

Among the salient points which emerge out of the discussion of the Executive in relation to the public service (Chapter ~~seven~~^{six}) and the political party (Chapter ~~Six~~^{seven}) are (i) the politicisation of the public service; (ii) the possibilities for dynamic action, unity and nation building implicit in the idea of the one-party state at this stage of African history; (iii) the dangers of loss of dynamism and of indifference among the rank and file members of the party that

can be engendered with the disappearance of the hostile opposition and the consequent lack of vigilance and vigour of the one party; (iv) the possibilities of the emergence of a self-perpetuating oligarchy, oblivious of its original purpose, and (v) the possible (and in some states actual) reaction setting in, particularly in the form of an intervention of the military. The idea of the one-party state has been advanced as a dynamic factor in the economic, social and political transformation of a country. It has been prescribed as a cure to ethno-centrifugal tendencies. It manifests itself as a closed party more or less along Leninist lines. This, at the government level, creates the possibilities of forming cliques and palace regimes. A pertinent question is to know how far the party influence keeps "purity" in the government (i.e. an honest and persistent dedication to the original policies and programmes worked out by the party); or how far, on the contrary, the government dominates (or even emasculates) the party thus destroying its critical, "confessional" and directive function.

The negative aspect of African presidentialism is its excessive centralisation and personalisation of power. No doubt that such a phenomenon is necessary at this stage of development. No doubt that a "'unified' command" is necessary in all emergency situations, wherein it would be disastrous to have too many centres of power pulling in many directions. The present stage of African history has been all too often

likened to an emergency situation - the war against poverty, ignorance and disease being added to the war against division and subversion. But monopoly of power in a closed system can so easily lead to the insolence of office and corruption. This in turn can create public disaffection leading to upheavals. It is even possible that all this may happen in states where the president and some members of his government are honest and dedicated men.

The phenomenon of a series of military coups in the last two years is at once a setback to African presidentialism as well as perhaps a sobering experience to possible excesses in the one-party system of government. When the present study was started only Algeria had suffered such a set-back. Since January 1966, a kind of "domino theory" seems to have set in leading to a series of military coups unseating several civilian governments, some of which had felt safely established. Part Four of this study is therefore devoted to case studies of many of the states where such upheavals have occurred. An attempt is made to point to certain root causes of military intervention in politics in general; and, in the light of this, an account of the main events leading to the military coup in each of the cases studied is given, followed by a selected examination of the military Executive.

2. The purpose of the study.

The foregoing paragraphs show, in outline, the nature and scope of the present study. The overall purpose of the

study and the choice of an approach which combines structural analysis with what may be called a functional review, is to give a rounded picture of the position and power of the Executive in Africa today - an Executive which has become the focal point in national life. It is a comparative study of a wide area, which aims at depth as well as coverage - hardly an easy task. Any comparative study covering a wide area with such an aim has certain limitations: at times depth may be sacrificed for coverage, or vice versa. But this can be minimised by selectivity - a selective treatment of significant materials which provide certain basic common factors, points of variance being noted. This would also, it is hoped, show the unity of the subject. It will be seen that what gives unity to the subject under study is not merely geographical, but a number of other factors, chief among them being: common or similar history, common problems and common or similar policy orientation.

From the standpoint of inter-discipline it is necessary to point out that many aspects of constitutional law lie in a twilight region between law and political science. A comparative study of the Executive with an emphasis on institutional analysis would be incomplete, superficial or even misleading if it is not made against a general social and political background.

"...no set of generalisations can reflect the subtle gradations of power and influence that may be concealed behind constitutional

forms. And when the forms of western constitutionalism are engrafted upon an ancient social and political structure, appearance and reality may be as remote from one another as are constitutional law and practice in England." 11

Yet, clearly, it would be beyond the scope of this study to discuss at any length the economic and sociological factors that affect the nature and function of the Executive. Nor would it be possible to deal with all but the most significant political factors which influence the making and working of the constitutional system as regards the Executive. For example, the working of the electoral machinery and the whole field of franchise is a subject central to a representative government and affects the structure of the Executive. This is especially true in plural societies. But in the context of the present study it is of peripheral interest only, though its presence in the background is assumed.

The nature and scope of this study must preclude detailed considerations of such matters, though it is impossible to avoid discussion of relevant questions which are, on the face of them, outside the subject under study. Later sections of this Introductory Chapter explain some of the most important questions, in an attempt to put the chapters that follow in a historical and socio-political setting. The focus throughout

1. de Smith. The New Commonwealth and its Constitutions, pp. 155-6.

2. By 'plural societies' is meant societies in which there are several ethnic or linguistic groups.

remains on the Executive, so that even where it is discussed in relation to other institutions, these latter concern us only to the extent that their structure, function and ethos affect the working of the Executive. Accordingly no detailed account is given of the organisations of political parties and the public service, though no aspect considered to be significant is left out.

In the chapter on Historical Introduction (Chapter Two) an attempt is made to show that the form and character of the African Executive has been influenced by the "dual past" viz. the pre-colonial past and the colonial experience. The influence of the colonial legacy can be seen in the centralised and concentrated nature of power in African states. This bears close relation to the power of the colonial governor. Although this phenomenon to revert to an authoritarian kind of rule cannot be explained entirely by reference to the colonial rule, there is a striking parallel, as will be seen in the chapter on Historical Introduction. If it is remembered that, even in cases where the impact of colonial rule has been great, it had succeeded in handing to the African governments a machinery of a state but not a unified nation, the great task of the new governments in welding one nation out of different groups becomes clear. The removal of an authoritarian colonial regime left a vacuum which needed to be filled by the new African government.

With these observations in mind we shall now define the African Executive and examine its place in society. We shall also examine some of the key concepts and ideas which helped to provide it a new legitimacy and outline some of the problems - which arise in connection with all this.

3. The meaning and position of the Executive in Africa.

The dictionary meaning of the term Executive is (i) that branch of the government charged with the execution of laws; and (ii) the person or persons in whom the high magistracy¹ of the state is vested. The technical description of the term given in modern text books on constitutional law is as involved as the tasks performed by modern governments. In modern times, there has been a general increase in these tasks as the so called 'Welfare State' has taken over more and more social and economic functions formerly performed by private persons or institutions. This increase has been accompanied by an increasing share in legislative initiative by the Executive which, according to the doctrine of separation of powers, was the province of parliament.

In Western societies, specialisation of functions was not limited to the "public sector". The 'economic' had tended to be associated with special social units (firms), the religious with other such units (churches), the advent of

1. Oxford English Dictionary Littré has it as 'pouvoir chargé d'exécuter les lois.'

government intervention in the regulation and control of social and economic life, therefore, met with stiff opposition from some of these social units.

In Africa it has been (and to a great extent still is) common for one social unit such as a lineage group to be "economic" and "political" and "religious".¹ The advent, in Africa, of the modern state, with an increased share in the planning, regulation execution and control of social and economic matters is thus a development which could not be expected to meet similar types of opposition as in western societies. The type of governments which have been organised are also, sometimes explained in terms of the nature of African community life, as well as in terms of being creatures² or reactions to the colonial experience.

Turning to the definition of the Executive in Africa, we may start with the dictionary definition in general and particularise it to the African (transitional) situation by saying that the Executive in Africa today is (i) that branch of government charged with the planning, initiation and execution of laws; and (ii) the person or persons in whom the high magistracy of the state is vested, including the role of inspiring, guiding and leading the nation in a period of social and economic transformation and nation building.

1. Lloyd A. Fallers, "Bantu Bureaucracy", 1962, pp. 4-5.

2. Julius K. Nyerere, 'Ujama' The basis of African Socialism', Dar-es-Salaam, 1962, p. 3.

(1) The Institution. When examining any institution it is essential to see it in its relationship with other institutions in the society in which it operates - its consequence for the latter, and vice versa. Such^a relationship may be seen in terms of harmony and mutual support as well as in terms of conflict. The relation of the Executive and the Legislature, for example, is one where the primacy of the Executive over a national assembly is recognised in the majority of African states and asserted through several devices. Parliamentary government in the sense that the government requires the continuous support of a majority party or a coalition of parties is abandoned in favour of an assembly composed of members who belong to a single party, headed (in almost all cases) by the Chief Executive. The Executive thus controls parliament, and it is one of the aims of the present study to show that such parliaments are not as vigorous critics of the government as in Western (classical) parliamentary government; but that they are not, for all that, necessarily use-¹less. Their role is best seen as "legitimizing conventions". What has been emphasised in Africa is unity and a harmonious working for a common goal. The two-party dichotomy has not been admissible in such a scheme of things.

These tendencies towards harmony in the institutions are

1. cf. Chapter Five.

among the primary desiderata in African political thinking. Arguments have been put forward in support of this. African community life with its emphasis on harmony and consensus is one argument. The traditional African method of reaching "the truth" by means of the village meeting seeking to establish a consensus of opinion seems to have been projected to the national level. The argument for the need to weld a new nation out of many different groups is also irresistible.

Complete harmony in institutional relationship is, of course, impossible, nor is it claimed that African community life has been without conflicts, or that the present tasks of nation building have no problems of conflict. On the contrary it is recognised that fears and suspicions have to be overcome and ethnic rivalries transformed into co-operative efforts for common goals. In the relationship between the Executive and the Legislature, moreover, the problem does not stop there. There may be rivalries within the same party based on personal or other considerations, which might use the other factors of division for their own ends. If this were put in the context of a classical parliamentary system it might involve the Executive and members of the Legislature in disputes which could produce hostilities harmful to the whole society. On the other hand if incipient conflicts are muffled and suppressed the outcome may be expressed in explosive forms; or, again, the rivalries may be counter-productive in terms of efficiency and united effort.

The question, then, is how such conflicts or potential conflicts can be resolved institutionally. In the case of the Executive-Legislature conflict, the ultimate means of resolving it is dissolution of the Legislature. Dissolution is the "democratic fulcrum of the entire process of adjusting power conflicts by making the electorate the ultimate determining factor."¹ In African constitutional arrangement, the Executive has been given, in most states, the right to dissolve parliament or to refer the subject of conflict to popular judgment in a referendum, which can perhaps be so timed and arranged as to produce a desired result.² It is true that in the classical cabinet system, the threat of dissolution could be used by the Prime Minister to preserve party discipline and to maintain his government in office. But this is predicated on the interplay of two rival parties, whereas in Africa the Executive dominance is made more secure through a one-party state.

The implications of such dominance are immense. The Executive together with the one-party organisation is the most important political factor in Africa, as later pages of this study will show.³ And one "school of political science"

1. Karl Lowenstein, "Constitutions and Constitutional trends since World War II, ed. Arnold J. Zurcher, ~~p. 209~~, (New York, Univ. Press, 1951), p. 209.

2. See Chapter Five, ~~pp.~~

3. When reference is made to party organisations, this is to be understood as excluding states ruled by the military.

has offered a definition of the political system, generous enough to include systems in transition and revolutionary regimes in the process of acquiring "legitimacy". According to this study a political system is:

"that system of interactions to be found in all independent societies which performs the functions of integration and adaptation (both internally and vis-a-vis other societies) by means of the employment, or threat of employment, of more or less legitimate physical compulsion." ¹

The political system, not only as the legitimate order maintaining but also as a "transforming system in society" acquires a dynamic significance and hence becomes of great relevance to societies in transition such as are all African societies today. Such systems in Africa, are largely the creation of the modern nationalist leaders who are in charge of the government. The role of the Executive is particularly high in the life of the political system. The role itself is in a large measure created and developed by the leaders themselves, as are the political institutions in which the role is cast.

A role is what is expected of a person in a given context, as well as what the person makes of it. What is expected of a person is the demand of an interested party who makes the expectation. It may, of course, be regulated within reasonable limits; and in the case of the constitutional role of the

1. Gabriel A. Almond and James S. Coleman, (ed) in "The politics of the Developing Areas", (1960) p. 7.

Executive it is fixed with certainty. But, in practice there must be "departures" from the static condition, as fixed in the constitutional or other documents, owing to the demands of changing situations. In short, roles are cast in static terms, but are acted in dynamic terms in a given situation.

(ii) The men. This introduces the second element of our definition, namely the person or persons in whom the High Magistracy of the state is vested. It will be seen from the foregoing that the role of "inspiring", guiding and leading the nation in a framework of social and economic transformation through a period of transition must be part of the definition of the African Executive. If this is remembered it will be possible to discharge the emotional content of words like "autocratic", "authoritarian" or "dictatorship", and render a study of the subject more fruitful.

A study of the Executive at a crucial period of transition is justified on the grounds, among others, that it may contribute to an understanding of the character of the nation in transition. In Africa, more than elsewhere, the Executive today is very much the centre of the network of institutions of the state. And the men who hold Executive offices are the central and dominant figures of the society. Most of them led the movements for national independence from colonial rule. They were the central characters during

the drama of national birth, and they embodied the hopes and aspirations of their fellow countrymen. It is indeed difficult at times to separate the man from the office,¹ which in many cases was created by or for the man.

It might be said that the Executive as a super-structure merely reflects the character of the society in which it operates, or that the men represent a small group of educated power elite. This is of course true. But Africa is not unique in providing examples which demonstrate the validity of the proposition that people who dominate the seat of government over a certain period leave peculiar marks on their societies. There are many such examples in history. In some of these, in point of fact, some important aspects of the central institutions were worked out with the central figure of the time in mind. The position of the President of the U.S.A., for example, would have been made much weaker but for the presence of a public figure like George Washington, who commanded the respect and confidence of all the leaders of the states who were jealous of their states' rights and interests. President de Gaulle and the Constitution of the Fifth French Republic is another example.

In the new African states the Executives do not reflect

1. For a biographical account of some leaders and events see Ronald Segal, 'African Profiles', Penguin African Library, 1963.

their societies in the (evolutionary) sense that their positions represent natural outgrowths of the configuration of political forces of the societies. They are new creations super-imposed on their societies which they seek to transform. The term "nation-building" sums up the political aspect of such attempts at transformation, and chief among the factors in this process is the president who acts, *inter alia*, as an outward symbol of a new centre of loyalty and national unity. Nor should the epithets used with the names of some of the African leaders such as "Mwa¹limu", "Musai", "El Rais" or "Osagefo" be understood as the whimsical creation of power hungry men. Each has a significance connected with the tradition of the particular society (e.g. Musai and Osagefo) or has a definite connection with the personal history of the particular leader (e.g. Mwalimu). To take Mwalimu, for example, the word means teacher in Swahili and President Nyerere who was a teacher by profession is referred to as "Mwalimu" the teacher of all his countrymen in the sense of one who leads, who shows the way. But this is so not merely because he was a teacher by profession, but because he went up and down the country to organise branches of the political party which he had founded in 1954.

Such devices were designed to strengthen the image of the

1. cf. R. Segal, *op.cit.* pp.123-130.

new leaders and with them the nation which represented a wider loyalty than the "tribes¹~~men~~" to which Africans had hitherto been accustomed. The question of how a tribal or other loyalty can be replaced by or transformed to a wider loyalty goes hand in hand with the question of national leadership and the successful projection of new ideas and values connected with such leadership. The writ of the colonial power acting through a network of provincial and district administrators had treated as a state what had previously been groups of people held together by kingship, kinship or religion. ¹ Boundaries existed in Africa before the Europeans arrived; but they were cultural boundaries (or marches): the adjoining places of communities rather than legal dividing lines. The new African leaders inherited from the colonial powers states with arbitrarily fixed boundaries cutting across ethnic and linguistic groups and ² problems allied with this.

It has been said that faced with such a situation the new African Executives were,

"far less favourably placed than were the Governments of those 18th century and 19th Century states which came into being as a result of the application of organised force", ³

for example the U.S.A., Italy and Germany. According to

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1. cf. John Fletcher-Cooke, 'Parliament, Executive and Civil Service', in Parliament as an Export. Sir Alan Burns (ed) (1966) p. 154.
 2. cf. Paul Bohannon, "African Outline", Penguin African Library (1966) p. 28.
 3. John Fletcher-Cooke, *ibid.*

this view the "peaceful" passage to independent statehood of the new African states has deprived them of an element of cohesion. Such view is based on the assumption that the heat of battle and the flow of blood provides a kind of spiritual mortar binding citizens together.¹ If so, and this is by no means certain, then the new nations will have to make do with a political substitute to this 'missing element'. Such a substitute can only be dynamic leadership which can successfully mobilise people on the basis of ideas that can move people to build a nation.

One result of this can be the replacement of some features of the state apparatus (and the ideas underlying it) left by the Colonial power by new institutional forms and patterns. The political awakening of the Africans which had started slowly prepared the ground for such new forms and patterns.

4. Political Awakening

Africa has a long history, and has had many awakenings during this history. The most recent awakening, i.e. that derived from European contact is a crucial one, though by no means the only important one. This last awakening involves the whole fabric of African life and thought in all its aspects.² One of the interesting effects of this process has been the emergence of a nationalism which has been

1. Ibid.

2. cf. Rupert Emerson and Martin Kifson (ed). 'The Political Awakening of Africa', (1961). p.1.

accompanied by a profound search for a history and identity. The search was for an African culture which was thought to have been put in abeyance and an African personality suppressed by colonialism. This is of course not peculiar to Africa. Nationalist movements are generally accompanied by a parallel movement of ideas which enable the leaders to create a potent essence of the new nation seeking recognition. The need for African peoples to 'justify themselves' has been perhaps even more keenly felt than in other nationalist movements because of a belief sedulously maintained that Africa was 'the dark continent' and its past consisted of fetish-¹ ridden 'primitive cultures'. But as Bohannan has put it,

"the darkness had much more to do with the Europeans and American visitors to it, and workers in it, than it had to do with the Africans." ²

The seeds of the new nationalism were variously sown at various times and places before World War II. Before World War II explicit protests did not take the form of agitation and large scale organisation for independence. Rather, they took a 'cultural' form. The role of Afro-Americans and Afro-Carribeans is of significance in the shaping of ideas which helped the development of the new nationalism. The poems and other writings of W.E.B. du Bois, Langston Hughes, and Aimé Césaire to mention a few, stirred the emotional impulse for a rediscovery of an African identity.

1. cf. Thomas Hodgkin, 'Nationalism in Colonial Africa' (London 1956), esp. p. 169.

2. Paul Bohannan, 'African outline' Penguin (1964), p. 13.

Certain ideas, concepts and sentiments grew out of the experience of colonial rule which facilitated the growth of the new nationalism. As a student of this subject has put it:

"in order to understand certain aspects of African nationalism and its carry-overs, it is important to consider the fact that colonial rule was not only a political and economic affair, but that it also imposed a specific social framework for the African's experience both of the world and of himself. The fact of political domination created areas of contact between Africans and Europeans all over the continent under conditions that constantly underscored racial and cultural differences. The colonial relationship thus involved the total cultural situation and cultural differences."¹

The concept of négritude was the most expressive form of cultural nationalism which was developed in Francophonic African circles. The main ideas of negritude may be gleaned from the writings of Aimé Césaire and Leopold Sedar Senghor. Senghor's poetry in particular shows the African facing the dilemma of becoming a Frenchman and remaining an African.²

Négritude was a conception of African culture, within which the deprived and despised peoples of Africa were to regain their birthright. Pan-Africanism was its (more strictly) political counter-part, which was to be used for the same end. Here again, Afro-Americans have played a role.

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1. Abiola Irele, 'Négritude or Black Cultural Nationalism' The Journal of African Studies, Vol. 3, No.3, (1965) p.321.
 2. Senghor the poet resolves the dilemma in favour of the latter, while Senghor the politician is perhaps the most ardent Francophonist, as witness his most recent advocacy of the nation of 'francophonie' which seeks to preserve the unity of all French-speaking peoples.

Marcus Garvey's 'Back to Africa' movement and the writings of Dubois and Blyden initially moulded the concept of Pan-Africanism. It was perhaps more natural for these people who had lost the knowledge of their African place of origin to order a search for dignity and equality in terms of an all-embracing concept. But it soon caught the imagination of African leaders of the inter-war period in their student days (e.g. Nkrumah, Kenyatta and ¹ Azikiwe). The political leaders of Africa seized on these concepts and built them into their nationalism as the key-stones. The concept of Pan-Africanism came to be associated with some of the leaders but all of the leaders used these concepts and the sentiments generated from them as building blocks for their task of nation-building. In this process of the mobilisation of ideas for the political and social mobilisation of African peoples, cultural elements which had been put in abeyance or suppressed were summoned forth from the collective subconscious, as it were. Whether or not the claims that were made about the historical or logical validity of some of these ^{were well-founded} is not material. What mattered was that people responded to the call.

In this, ironically enough, colonialism was the chief irritant. The colonial experience of domination and all that this implied in the arbitrary reordering of political

1. cf. Colin Legum, 'Pan Africanism' (London) 1962

and social life of the African had created what Georges Balandier calls 'a state of latent crisis', with an inherent tension.¹ When the movements for independence were unleashed, therefore, there was a break of the tension² releasing the energies of the masses. The African political movements must be seen against this background. The subsequent reactions, the search for new values and for readjustment of political and social forces must also be related to this background. It must not be supposed that this readjustment involved a rejection of all that was part of the colonial experience; this is indeed not possible. Even the most dedicated apostles of négritude do not suggest this, as can be seen in Senghor's dilemma, which is reflected in all African affairs. Take again the example of Kwame Nkrumah, who developed the concept of the African personality as a roughly 'Anglophonic' equivalent to négritude. Nkrumah has written that:

"...the defeat of colonialism and even neo-colonialism will not result in the automatic disappearance of the imported patterns of thought and social organisation. For these patterns have taken root, and are in varying

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1. cf. George Balandier, 'Sociologie actuelle de l'Afrique noire', (Paris 1963, 2nd ed. 1963) pp. 3-38.
 2. Lest this should sound a gross over simplification of an experience which took many years to mature and needed the help of many good people outside Africa, it must be recorded that the movement was at first sluggish and plaintive; and that there were in Britain and France many people - liberals, pacifists, socialists, humanists, Christians and communists who helped in awakening the conscience of their peoples and governments. cf. Emerson and Kitson, op.cit. p. 14.

degrees sociological features of our contemporary society. Nor will a simple return to the communalistic society of ancient Africa offer a solution either. To advocate a return, as it were, to the rock from which we were hewn is a charming thought, but we are faced with contemporary problems, which have arisen from political subjugation, economic exploitation, educational backwardness, increase in population, familiarity with the methods and products of industrialisation, modern agricultural techniques." 1

The colonial experience is thus a complex experience. The 'state of latent crisis' must be viewed in dynamic terms; a cultural cross-fertilization was taking place all the time.

"In spite of the great apparent stability of colonial social and political structure, and its similarity the world over, there are points at which the two cultures interpenetrate and ultimately destroy the janus-faced system. These destroyers were in the world of things - the material items brought by trade - and in the world of ideas, the ideas brought by missionaries as well as by government officials and traders." 2

Among the most potent ideas that the nationalist leaders used in their claim for independence was those of democracy. They invoked every principle that is cherished in the politics of the metropolitan world, in order to achieve their ends. This started a process of political education among African peoples. "One man one vote" was a companion of "Uhuru", "Umoja" and "Istiqlal" in the political vocabulary of the ordinary African, just as négritude and Pan-Africanism moved African leaders to seek a larger African unity "trans-

1. Kwame Nkrumah, 'African Socialism Revisited', African Forum, Vol. 1, No.3 (1966), p.3-9 at pp.6-7.

2. Paul Bohannon, op.cit. p. 30.

ending ethnic and national difference".¹ The nationalist movements flowered in the forties and early fifties and started bearing fruit - the fruit of political independence - in the late fifties and early sixties. Morocco, Tunisia and the Sudan had all acceded to independence by the mid-fifties, but the flood-gate was opened in 1957 with the birth of independent Ghana.

5. New Legitimacy

The nationalist movements had produced new political and organisational forms. The formation of political parties, the campaign for election to legislative councils, the rallies and demonstrations were part of the experience of the latest stage of the colonial rule. The new leaders who were swept to power on the crest of nationalist waves² established their authority in a very short period of time. It all happened so rapidly that some members of the colonial governments did not see the full significance of the events,³ and continued to refer to the leaders as a band of agitators. Those of them who realised the seriousness of the situation, however, had to do all they could to hang on and try to steer. But even that in many cases was not very successful. A new era had begun. The leaders were recognised as the legitimate

1. cf. The preamble of the O.A.U. Charter.

2. By comparison with Ghandi and Nehru whom it took decades.

3. Basil Davidson, "Which way Africa", Penguin (1964) p.107.

successors to the colonial governors and the stage was set for negotiations for self-rule. And all the while organised African masses watched with keen expectation - all eyes focussed on the new leaders who personified new hopes, and who commanded the respect and admiration of their peoples, which was translated into authority when the Colonial power (hitherto the central and only authority) handed over power to them. The final phase of this authority was when the stamp of legitimacy was put on it in the election which put a new African government in office. The election of the government and later of the President (or Prime Minister, as the case may be) was an event of particular significance in the making of the new legitimate African authority. A whole people's attention was centred on men who were expected to lead the people to a better future. It was no mere ritual (at first, at any rate); it was an event in which the people took part, with pride and hope.

Such have been the ways in which African peoples have sprung into their independent statehood, and such were the roles played by the leaders and their political parties that in many instances the independent state in the early days came to be associated with the party and the leader.

Ideology

The new African governments had inherited the political structure of the colonial state, with little modifications.

Many of them felt the necessity of systematically developing political social and economic systems that would meet the urgent needs of their peoples in the post-colonial period. A number of African leaders had indeed met this challenge in theoretical terms, offering possible answers. Most of these expressed an ideology along socialist lines, some purporting to show a relation between socialism and African communal life, and others with Islam. The chief exponents of "African Socialism" are Leopold Sedar Senghor, and Julius Nyerere.

(1) African Socialism

Senghor was probably the first to use the term African socialism. Senghor had come in touch with Marxism and with Socialism as expounded by French socialists, some of whom like Pierre Teilhard de Chardin had sought to reconcile Christianity with Marxism. Senghor in turn developed his own ideas which attempted to reconcile socialism with his conception of "the African way of life." In his "African Socialism" he writes:

"...in contrast to the classic European, the Negro-African does not draw a line between himself and the object; he does not hold it at a distance, nor does he merely look at it and analyse it. After holding it at a distance, after scanning it without analysing it, he takes it vibrant in his hands, careful not to kill or fix it. He touches it, feels it, smells it. The Negro-African is like one of those Third Worms, a pure field of sensations...Thus the Negro-African sympathizes, abandons his personality to become identified with the Other, dies to be reborn in the Other. He does not assimilate;

he is assimilated. He lives a common life with the other; he lives in a symbiosis." ¹

Nkrumah, who advocates 'Scientific Socialism', dismisses this passage and the ideas of Senghor in one short but devastating sentence: "It is clear", he writes "that socialism cannot be founded on this kind of metaphysics of knowledge." ² But before we consider Nkrumah's scientific socialism we must present the other view of African Socialism - Nyerere's.

If Senghor's approach to "African Socialism" is from a poetic and philosophical angle Nyerere's is from a sociological one. He writes:

"The foundation and the objective of African socialism is the extended family. The true African socialist does not look on one class of men as his brethren, and another as his natural enemies. He regards all men as his brethren - as members of his extending family. That is why the first article of TANU'S creed is 'Binadamu wote ni ndugu zangu, na Afrika ni moja'. If this had been originally put in English it could have been: 'I believe in Human brotherhood and the unity of Africa'. ...Ujama, then, or 'familihood' describes our socialism. It is opposed to capitalism, which seeks to build a happy society on the basis of the exploitation of man by man, and it is equally opposed to doctrinaire socialism which seeks to build its happy society on a philosophy of inevitable conflict between man and man..." ³

Nyerere is among the few African leaders who have worked out plans and programmes of action based on the ideology which they proposed as the foundation of their political,

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1. L.S. Senghor, 'African Socialism' (London and New York, 1964 pp. 72-3). cf. also his 'The Road to African Socialism' African Forum, Vol.1, No.3 (1966) pp. 10-16.
 2. K. Nkrumah, op.cit. p. 8.
 3. Julius K. Nyerere, 'Ujama' the basis of African Socialism', (Dar-es-Salaam, 1962), p. 3.

social and economic life. The Arusha Declaration shows the extent of the determination to think through and carry out such plans and programmes as we shall see in a later chapter.¹ The organisation of the co-operatives in Tanzania reflects the economic aspect of Nyerere's socialism, as a practical step taken to realise the objectives set out in a socialist plan. In fact the economics of Nyerere's socialism does not appear to be different, in practice, from one advocated by Nkrumah, for example. This is borne out by the latest measure taken by the Government of Tanzania nationalising private banks.

On the other hand another variety of "African Socialism" has appeared in Kenya. The main features of this variety appear to be: "political democracy", mutual social responsibility, various forms of ownership, a range of controls to ensure that property is used in the mutual interests of society and its members, diffusion of ownership and progressive taxation.² One of the authors of the document, Mr. Mwai Kibaki, had indeed declared in the Kenya Parliament as early as 1963 when he was Parliamentary Secretary to the Treasury that the Kenya Government had made it clear that it was working for a mixed economy. He defined this as:

"an economy in which the Government will make its contribution in the spheres where the private

1. cf. Chapter ~~Eight~~ Seven.

2. cf. African Socialism and its Application to Planning in Kenya, a monograph distributed by the Kenya Government.

investor may be hesitant to come in, in spheres where the project takes a long, long time to mature and to show profit...Those areas in which services and goods are being provided by private industry - and being provided very efficiently - we are not going to interfere with...We intend to have an economy where the government and the private industries co-operate, and an economy where an ordinary individual person, if he has his money, is free to move in the direction he wants to move...This is not to say...that we are not aware that the bulk of the people in this country are poor and that they look to the Government for the provision of social services and incomes which they are not in a position to provide themselves (italics supplied)...But we are equally aware...that the way to help them is not to grab what little exists, or what little has been developed, and to distribute it to these people...¹ that would be the height of irresponsibility."

President Senghor also justifies the role of the private sector on similar grounds, adding a caveat that he had no illusion about the motives of the private investor, "who seeks only profit."² He agrees that the private investor should draw a reasonable profit "as counterpart for the risk he takes and for his voluntary participation in our development effort." In so doing, he goes on, a betrayal of the socialist mission is not involved, because priority in the present phase of building socialism_x goes to economic growth.

"The essence of our socialism is that, with the help of science and technology, all the potentialities of the country may be exploited to the maximum." ³

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1. Quoted by Martin Kilson, 'Politics of African Socialism', African Forum, Vol.1, No.3 (1966) p.20. Mr. Kibaki who is a graduate of the London School of Economics has since been promoted to the post of Minister of Commerce and Industry.
 2. cf. L.S. Senghor, 'The African Road to Socialism', African Forum^{Vol.1, No.3} (1966) p.14.
 3. Ibid.

What has been rationalised as 'African Socialism' in Kenya may be found in other African states such as the Ivory Coast, though not officially advocated, as such. President Felix Houphouet-Boigny is fact 'presides' over a new class of planters who provided the take-off point of his political career.¹ The splendour and extravagance of his palace has been the source of wonder to many a visitor of Abijan.² It has been described as a measure of Houphouet-Boigny's personality and a guide to the policy and place of his government in Africa, which represents the other extreme as compared with Guinea and Mali, for instance.

"Indeed, if a block of modern African states exists, pro-Western and maintaining close political and economic links with France Houphouet-Boigny is more than anyone else responsible."³

(ii) Scientific Socialism

A few months before his fall, Kwame Nkrumah put "African Socialism" in a new perspective, dissociating his own "scientific socialism" from it.⁴ According to Nkrumah the term "socialism" unites Africans in an attempt to restore what he calls Africa's humanist and egalitarian principles of society. But, as he had earlier warned:

"socialism in Africa today tends to use its

1. cf. Andre Blanchet in 'African one-party states', Gwendolen M. Carter (ed), (New York 1962), p. 275.

2. cf. West Africa, 26th August, 1961.

3. Ronald Segal, op.cit. p. 280.

4. cf. Kwame Nkrumah, 'African Socialism Revisited', loc.cit.

objective content in favour of a distracting terminology and in favour of a general confusion. Discussion centres more on the various conceivable types of socialism than upon the need for socialist development".¹

One of the questions which arises in connection with "African Socialism" - or indeed with any such ideology - is its possible misuse by leaders in a charismatic effort to rally support for undesirable ends. Nkrumah points out that some (unnamed) African leaders had found it necessary to invoke the concept in aid of policies that do not really promote economic and social development.² In his view, although African leaders and writers have used the term "African Socialism" in order to label the concrete forms that socialism might assume in Africa, the realities of:

"the diverse and irreconcilable social, political and economic policies being pursued by African States had made the term meaningless and irrelevant."³

Nkrumah advances "scientific socialism" on the grounds that it has abiding principles according to which the means of production and distribution ought to be socialised if exploitation of the many by the few is to be prevented: if, that is to say, egalitarianism in the economy is to be protected. For, according to him, egalitarianism is a central principle of socialism. It was also a dominant feature of traditional African society, although Nkrumah suggests that

1. Kwame Nkrumah 'Consciencism' (London & New York 1964) p.105.

2. 'African Socialism Revisited' loc. cit. p. 4.

3. Ibid.

in its actual working it had various shortcomings. He rejects the view that traditional African society was a classless society, but admits that it had a "humanist impulse" which he thinks is worthy of recapture. But it is not the structure of traditional society but its spirit that socialist thought in Africa must recapture.

Nkrumah goes on:

"We postulate each man to be an end in himself, not merely a means; and we accept the necessity of guaranteeing each man equal opportunities for his development. The implications of this for socio-political practice have to be worked out scientifically, and the necessary social and economic policies pursued with resolution. Any meaningful humanism must begin from egalitarianism and must lead to objectively chosen policies for safeguarding and sustaining egalitarianism. Hence, socialism. Hence, also, scientific socialism."¹

And it is not scientific to suppose that there are tribal, national or racial socialisms. It is "to abandon objectivity² in favour of chauvinism."

In Ghana the socialist goals were set, the principles propounded and some programmes worked out. The substance of the Republican constitution was that it provided a constitutional framework for a government whose task was conceived in terms of the socialist principles and programmes. But an important aspect of the preparation had been neglected, as we shall see in Chapter Six, namely the mass organisation on which the

1. Op.cit. p.6.

2. Op.cit. p.9.

support of the policy depended. Again one of the paradoxes in the "ideological battle" in Africa is that Nkrumah's government, despite the vigour with which the principles were propounded, did not make much headway in implementing socialist policy. The "bureaucratic" regulatory onslaught against expatriate concerns and capitalists has not been as great as in Guinea or Algeria, for example. Some concerns were "squeezed" by increased taxes; and the large commercial firms like the United Africa Co., and the United Trading Co. had to face a reduced market owing to a partial monopoly of retail commerce (30%) carved out by the government's¹ National Trading Corporation. But this fell far short of the policy advocated by Nkrumah.

(iii) Ideology and Economic Development

Nkrumah recognised that African governments have had to depend on the capital resources of the industrialised nations, especially of Western Europe and America. He also admitted the dilemma that this posed to these African governments, that had declared war against neo-colonialism, such² as his own government. It is indeed a cruel dilemma, particularly for an ideological approach to economic development. One of the great advantages of such an approach is the drive

1. Martin Kilson, op.cit. p. 19.

2. cf. His speech to the O.A.U., summit meeting Addis Ababa, May 1963.

and concentrated efforts it produces along defined lines of action and points of application over a specified period and area. The appeal of Marxist approach to development, which Nkrumah, Sékou Touré and Modibo Keita seemed to follow, stemmed partly from its singleminded drive for industrialisation. Industrialisation is one sure way of getting out of the poverty in which the underdeveloped nations find themselves. And as no country wished to remain poor the appeal of industrialisation is in a sense universal. But in the case of Nkrumah and Sékou Touré, for example, there was ~~the~~ this difference that in their view of industrialisation agriculture took a secondary place being conceived as a means to strengthen industrial development. To them the foundation for a socialist society could be laid only by creating a mechanised diversified agriculture serving as a base for industry.

Furthermore there was a clear implication that there cannot be socialism in the absence of industrialisation. Nkrumah stated in 1962 that Ghana was not yet a socialist state as she was not yet completely industrialised. His vision of an industrialised socialist society which was shared by Sékou Touré and others, envisaged a radical reconstruction of existing African society.

In this Herculean task the role of the party is considered

1. Kwame Nkrumah, 'Africa Needs her Farmers' (Accra, Ghana Government Printing Department 1962), p.1.

to be crucial. Here Lenin's influence is seen, for the party organised along Leninist lines was adopted as the most essential agency for economic and social change. The roles of the Convention Peoples Party (CPP) of Ghana, the Parti Démocratique de Guinée (PDG) and the Union Soudanaise of Mali were modelled on the Leninist type. The leaders of all three states stressed from the beginning the need of political organisation and the primacy of the party to control and direct economic development in the way Lenin did.

The organisation of the party, and the integration of the activities of its branches and affiliates for development purposes follows a certain pattern. We will cite one aspect of such activity from the experience of Mali, in order to drive home the point about the importance given to organisation for economic development. The Mali rural population is organised in co-operatives, and served by an organisation called the "Service de l'Action Rurale" which consists of two divisions:-

- (a) Division du Développement Rural, and
- (b) Centre National de la Co~~o~~opération.

The first is a technical organisation charged with the execution of programmes worked out in the National Plan. It also takes care of the training of the rural populations, of extension services, and of the supervision and control of the Central Treasury of the Agricultural Credit which handles loans to rural groups and agricultural co-operatives.

The second is the supreme organ of co-operatives in Mali.

It consists of four sections:-

- (i) Section for research and legislation,
- (ii) Section for training of cadres and psychological action,
- (iii) Control section, and
- (iv) Commercial section.

The role of the Centre National de la Co-opération is multiple, in general corresponding with the type of work listed under its four sections. The co-operative organisation of Mali which operates under the aegis of the Union Soudanaise, is well structured. Modibu Keita and his colleagues of the Party and government are among the leaders in Africa who have succeeded in reaching right down the root of society, because of a carefully organised party which grew from the "grass roots".

It is noteworthy that despite the marxist approach to organisation and development in Mali, Modibu Keita invokes the doctrines of Islam to buttress his ideas:

"there is no religion more socialist than the Moslem religion because it teaches that the wealthy must give, share and alleviate the sufferings of others." ²

1. Cf. Report: Political Secretary 6th Congress of the Union Soudanaise, pp.13-140.

2. Quoted by Thomas Hodgkin and Ruth Schachter Morganthau, "Mali", Political Parties and National Integration in Tropical Africa (eds) James S. Coleman and Carl G. Rosberg Jr. (Berkley and Los Angeles, U.C. Press, 1964), p.225.

Turning to 'Arab' Africa we find that the same sentiments as expressed by Modibo Keita in regard to Islam have been used by socialist leaders of North Africa. In the United Arab Republic 'Arab socialism' or 'democratic co-operative socialism' as it has sometimes been called has been preached. President Nasser has also called his 'Arab socialism' 'scientific' but has always been at pains to dis-associate his approach from the Marxist approach, particularly from its aspect of 'class struggle'. Nasser has said:

"...socialism to me means the ending of exploitation by all means. And in fulfilling this object we must stick to our belief. We must not have a dictatorship of one class - dictatorship of the proletariat, for instance, because there was the dictatorship of capitalism and of feudalism. Now we have put an end to that, we do not want to change by dictatorship of the proletariat but by the democracy of the whole people. Then we do not use force to fulfil our socialism - and here socialism, as I said, means social equality, the ending of the exploitation of corrupted capitalism and corrupted feudalism which took place in the past. We have fulfilled this step. The other step is to develop the country, and the main thing is the control of the means of production..."¹

It is claimed that Arab socialism in the U.A.R. has liberated the Egyptian people and established a new economic and social structure, the government having distributed land and brought the peasants and urban workers to participate in

1. Gamal Abdel Nasser answers to questions put to him in an interview by Robert McKenzie and Erskine Childers. The Listener (London May 19, 1966).

the political life of the nation. Nasser has said:

"We limited the ownership of land to one hundred acres, we distributed the rest of the land to the farmers: having co-operatives; collective farming, not collective farms - individual property but farming together, to give them machines, to give them experience, to give them everything. Then we nationalised ninety per cent of the industry and we took the initiative in industrialisation; then we opened education to everybody in the country according to his ability: that is to say equality for everyone in the country." ¹

The preamble of the Constitution of the U.A. R. contains the directive principles enunciated under Nasser's Arab socialism. The government is enjoined by the Constitution to develop the country in accordance with these principles. Certain aspects of Marxist-Leninist practices have been incorporated in Egyptian socialism. In terms of organisation, in particular this can be seen in the creation of the Socialist Union - an all-embracing but tightly controlled party, including in its membership the working population of peasants, workers, intellectuals and army men. All measures are discussed first by the cadres of the Socialist Union, then at closed meetings of the Executive Committee and the Central Committee, ² before they are adopted by the government.

'Arab socialism' was introduced in the Middle East by the

1. Ibid.; cf. also Peter Mansfield: 'Nasser's Egypt' (Penguin African Library, 1965), pp.129-214; and Anouar Abde Malik: 'Egypte, Société militaire' (Paris 1962), p.75.

2. Gamal Abdel Nasser, op.cit.

Baathist Party of Syria, and this no doubt has been partly a source of inspiration to Nasser's brand of socialism. In the rest of 'Arab' Africa also - Libya excepted - the advent of socialism has been of long duration. Bourguiba's Neo-Destour party and the FLN of Algeria each started with socialist aims. In Morocco socialists have been and still are in the opposition. Partly for historical reasons, but partly also due to the geopolitical barrier separating the U.A.L. from the Maghreb side of 'Arab' Africa (the Libyan desert no less than the monarchy) Nasser's socialism has not made much impact there.

In Algeria the FLN, because of the revolutionary nature of its original role, was bound to seek a militant ideology that was commensurate with the political and military struggle. Long contact of some of the FLN's leaders with French socialists had also contributed to a socialist orientation. The FLN had proclaimed before independence that the Algerian revolution was to be "a political, economic and social revolution".¹ This was reiterated after independence by both Ben Bella and (later) Boumédiène.² 'La Révolution Algérienne' has indeed acquired a mystique which Algerian leaders find necessary to invoke from time to time. Drastic economic measures have been taken

1. cf. El Moujahid (official organ of the FLN) Dec.21, 1961.

2. cf. François Borella, 'L'organisation actuelle des pouvoirs', Revue Algérienne des sciences Juridiques, politiques et Economiques, Dec. 1965 Nos. 3-4, pp.29-39.

in its name such as agrarian reform laws and nationalisation decrees. All the principal means of production including mining concerns and farms formerly owned by the French have been taken over by the state.

It will be seen from this brief account that socialist ideology in Africa is tied up with the national independence movement or with the aspirations for a better life of African peoples. In countries where socialism has not been introduced the alternative rallying force is nationalism. But all leaders appeal to the patriotic sentiments of their countrymen for more efforts or for certain goals. In this the practice of devising development plans has become universal.

"African States - even those with distinctly conservative governments - see national social and economic planning as a logical historical development from the national independence effort, now to be channelled into the rapid improvement of standards of life and of economic capacity. The national plan is a symbol of that effort and a means of bringing it about." ¹

Studies by economic experts of the United Nations Economic Commission for Africa (U.N.E.C.A.) reveal that with the disintegration of colonial systems, planning in former African colonies and protectorates has undergone a complete change.

"In some of them the planning conception approximates to the models of centrally planned economies; in others it is inspired by the techniques germinated in the market-oriented ones. Yet in both cases

1. Reginal H. Green, "Four African Development Plans: Ghana, Kenya, Nigeria and Tanzania". The Journal of Modern African Studies Vol. 3, No. 2 (1965), p. 249.

there is an attempt to re-examine the ideological foundations and economic concepts of planning in the light of their different stages of development and specific national conditions." ¹

In many plans the Pan-African ideal is expressed, either as an aspiration or with a concrete economic content, with a view to pooling resources and harmonising economic policies thus widening national markets ensuring rational industrial location, and breaking "the bottlenecks in capital and manpower." ²

6. Common problems in outline

(i) Economic and political

The question of planning is connected with economic problems, which we will therefore outline first. Putting aside "ideological" differences it is true to say that rapid economic development is both a necessity and a problem in Africa as in all under-developed countries. ³ It is also clear that such a development must be organised and directed according to a national plan. The problems of planning are very much greater in underdeveloped nations than in developed ones. All African

¹. Abdelmalek Ben-Amor and Frederick Clairmonte, 'Planning in Africa', The Journal of Modern African Studies, Vol. 3 No.4 (1965) p.473. Dr. F. F. Clairmonte is acting Chief of the Planning Section in the U.N.E.C.A., Addis Ababa. Mr. Abdelmalek Ben-Amor is an economic affairs officer in the E.C.A. and sub-regional office in Tangier.

2. A. Ben-Amor and F. Clairmonte, op.cit. p. 481.

3. The euphemism of "developing nations" has been substituted for under-developed countries which term was introduced in place of "backward" countries. Cf. an interesting discussion on the latter term by H. Myint, 'An Interpretation of Economic Backwardness', Oxford Economic Papers (1954), pp.132-163.

states have plans but the gap between intentions and performance¹ is wide. The main aspect of economic development in Africa is the disintegration of traditional economy and the diversion² of its resources of land and labour to the modern economy. The main problems have been grouped as: capital formation, industrial and farm modernisation. Shortage of domestic capital leads to borrowing or inviting foreign capital to be invested or to seeking aid. Now some western economists hold that the under-developed nations should concentrate on the production of primary commodities, which is not acceptable to³ many of the states who are determined on industrialisation. One problem which the shortage of capital presents is that those who provide the funds may and do dictate terms which limit government control or choice on the allocation of resources in their planning.

There is also a general lack of trained people. This is nowhere felt more keenly than in the planning offices; most countries have few people who are either divorced from economic decision-making, or have not got adequate control over super-⁴vision and implementation of the plan. The impact of develop-

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1. Cf. A. Ben-Amor and F. Clairmonte, op.cit. pp.478-479.
 2. With the exception of the U.A.R. (and of South Africa) the larger section of the population in Africa is engaged in traditional economy.
 3. Cf. Dudley Seers 'The Role of Industry in Development : Some Fallacies', The Journal of Modern African Studies, Vol.1 No.4 (1963) pp.461-5. The author advocates a balanced development of agriculture and industry.
 4. A. Ben-Amor and F. Clairmonte, op.cit. pp.494-5.

ment plans on the general population is also very little. This may be related to lack of co-ordinated and concerted effort which may in turn stem from the lack of political understanding.¹ In some cases it may also reflect divergent economic interests. The planners of the Cameroun have reappraised their first plan in a manner which can very well speak for most African states: "It must be acknowledged" they wrote,

"that the adoption of the plan has not been accompanied by propaganda and measures to popularise it throughout the country. Since the plan was formulated, local and national planning commissions have ceased to function. There has been a failure to 'indoctrinate' civil servants at every level, as well as the traditional and modern cadres so that they in turn have been unable to spread the mystique of the plan amongst the masses. The people have remained largely unaware of the idea of a common objective in development and the efforts necessary to achieve it. Thus the national dynamism that could be stirred up by the plan has for too long been neglected."²

Again the absence of a proper institutional framework is³ regarded as a major obstacle in development planning. In this connection, it has sometimes been suggested that multi-purpose institutions should be organised, designed to promote several

1. Ibid.

2. Ibid. quoted from 'Rapport général sur l'exécution du premier plan quinquennal jusqu'au 30 juin 1963. (Yaoundé, 1964), p.8.

3. Cf. W. A. Lewis, 'On Assessing a Development Plan' in Economic Bulletin (Accra), June-July 1959.

government policies at the same time in order to economise¹ on expertise and to facilitate co-ordination. This view, which lays emphasis on institutional creativity, is commendable particularly when it is remembered that the leaders of these states are responsible for the initiation, supervision and implementation of major policies, and that they will therefore need co-ordinated and co-ordinating institutions at their disposal. In their efforts to make a break-through out of the vicious circle of low growth rate and high rate of population growth, they need devices which relate goals, policies and institutional structures with the whole process of change. Imitation for its own sake will not do. It is logical that the initiative of policy in the field of development planning should be under the control of the Chief Executive or of a person invested with power under his direct authority. Matters of education, agriculture, stock-raising, industry, public works and transport, for example, should be dealt with in the light of the needs of the development plan. The activities of the authorities specialising in these matters should therefore be² co-ordinated with that end in view.

Some of this may create problems of inefficiency and abuse.

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1. Cf. Reginald H. Green, 'Multi-purpose Economic Institutions in Africa' in *The Journal of Modern African Studies*, Vol.1 No. 2 (1963) pp.163-184.
 2. Cf. Maurice Guernier, 'La planification, peut-elle résoudre le problème du sous-développement'. *Académie des sciences d'Outre-mer de Paris* III. March 1963, p. 145.

Some abuse may be made having immense economic implications of misallocation of resources. This is part of the risk that central direction involves. The point here is that given the total picture of under-development and the political system of one-party state with strong executive, which is posited as an answer to disunity as well as under-development, the logic of centralised direction and control follows irresistibly.

This brings us to the political problems involved.

Some writers on Africa have warned that in order to achieve peaceful nation-building certain conditions must be fulfilled. David Apter, one of the pioneers in modern African studies has urged in particular that political leaders in their political commitments need to restrict their objectives mainly on those changes in society which do not require massive alteration¹ in beliefs and customs. The existence of political and administrative infrastructure such as state or local councils decentralised operation of ministries and an African civil service system is advocated as a condition precedent for the existence and contribution of political parties. The higher political roles such as those embodied in a cabinet, a parliament or a civil service must themselves be supported by an infrastructure imbued with the values and mechanisms of representative government.² Apter was writing about Uganda on

1. David E. Apter, 'The political kingdom in Uganda', (1961) p.392-3.

2. Ibid.

the eve of her independence when "constitutional" formulae were being sought to solve a complex political problem. But his conclusions purport to have universal validity. The two alternatives which he saw were: (i) a competitive party system which needed the political and administrative infra-structure mentioned, without which the parties would fragment and become virtually powerless to operate an effective government; or (ii) what he called "the mobilisation approach", involving the use of the political leadership as "an entrepreneurial basis for changing the structure of society, that is forcing the people to be free."¹

We have stated previously that in countries like Ghana (under Nkrumah) Guinea, Mali and Tanzania the second alternative was adopted. Indeed, wherever the one-party system has been adopted the mobilisation approach may be said to have been chosen. And the logic of this choice dictates that the method chosen must be used to good advantage. In other words, once chosen, it must be seen through; the leaders cannot be half-hearted about the "mobilisation" without a risk of failure. This, as we shall see in more detail, is one important reason why the one-party² functions in states as different as Tanzania and Malawi. And it is easier to mobilise than to demobilise, because staying in power seems

1. Ibid.

2. See Chapter ~~Eighty~~ Six.

to be an occupational hazard, and a sudden demobilisation would mean undermining the basis of political power on which the leaders rest.

On the other hand Apter's point about the need of infrastructure cannot be over-emphasised. Nor is it a question simply of setting up local organisations. The new values which are implicit in the ideas and ideology which motivate the mobilisation must be understood and accepted by the general population. This cannot be effected by decrees and regulations alone, though that helps to set the tone and provide a framework. The more arduous task lies in political education, in the day-to-day teaching by which new ideas and values are imparted. This is a difficult and slow process. The best teaching is one given by precept and example, and here the symbolic gestures (or exemplary conduct) of the leadership is of the greatest moment. Like justice,¹ it must not only be done, it must be seen to be done.

Of course, too much could be predicated on the leader. There are obvious functional (administrative) and political problems, the latter being the more crucial and relevant to the present inquiry. It is not simply the Actonian question of the tendency of all power to corrupt, though that should not be ignored. It concerns the basis of the organisation

1. One is reminded of the example of Mahatma Ghandi's work and life in the Indian village.

of the political system of a state.

We will first tackle the theoretical question of "authority". Authority has been advanced as a key-concept in understanding the nature and function of the political system in preference¹ to Max Weber's concept of physical compulsion. According to this approach authority is established when a general feeling prevails that it must be obeyed. The question how and why such authority comes to be established is ~~perhaps~~ a more elusive one, and one perhaps which psychology more than political science is grappling with.

If man is a social animal first and a political animal second then it would follow that those who have the monopoly of political power should not rest until they capture the old social "centres of authority" that can refract the light of their new ideas and values which come forth from the new political system. It appears that the monopoly and planned use of the media of communication (propaganda) can in fact achieve this over a short period, provided there is relative order and stability. But the old social order persists and with it some of its values. A dynamic view of politics shows that the notion of stability does not result from the immuta-

1. Max Weber, 'Politics as a vocation', in Gerth and Mills, 'From Max Weber, (New York 1946) p.7. Cf. this with D. Easton 'The Political System : An inquiry into the State of Political Science' (New York 1953) pp.130-133; both are quoted and discussed in Almond and Coleman, op.cit. p.5 and 6 respectively.

bility of opposed or balanced forces, But as Jean Buchmann has written:

"dans la capacité d'absorption, dont fait preuve l'ordre social garanti par le régime politique en vigueur, à l'égard des forces qui visent à le transformer."

A politically stable society is one which enjoys sufficient vitality to adapt its ¹ structure and become amenable to change.

Where there is inadaptability or incompatibility of structures and "the margin of tolerance" is passed, then a sudden break or revolution ensues. ² In this regard the position of traditional elements is of interest. They are sometimes tolerated in modern societies when they are harmless or helpful. But if they are given representation in high levels, and especially in the person of the Head of State, they can become the centres round whom neo-traditional forces can crystallise and thus pose a threat to a new order. The problem has been faced in two ways: either they are suppressed initially by the new political forces, as happened in Guinea, or they are tolerated and even given representation at a high level as in Uganda and Lesotho. In the second case the change comes when new forces emerge ³ rendering the system anachronistic.

Normally a new political leadership establishes its

1. J. Buchmann, 'L'Afrique Noire Indépendante' (1961) p.13

2. Ibid.

3. Cf. Buchmann, *ibid.*

authority over a traditional society not only through the assertion of new principles and the manipulation of symbols and values but through the effective use of propaganda.

Initially, if the new political power is acquired by an act of revolution the physical force would be visible in the foreground.¹ But eventually the military withdraw to the background, and physical "compulsion" is replaced by a psychological "compulsion" in the daily life of the community.

The government exerts influence through a massive pressure of information and persuasion which never relaxes its hold on the population. In order to achieve maximum results every medium is used - oral, printed, pictorial, plastic, musical or dramatic. The propaganda of the deed is also used, consisting, for example, in symbolic gestures of the leader. Essentially propaganda is an act of advocacy of a deliberately one-sided nature with certain aims. This is naturally supplemented by instruction and information on a wide range of subjects useful to their recipients. Such instruction and information, apart from its intrinsic worth, can often serve as an incentive for more propaganda. The propaganda of social revolution in modern times has developed new techniques of

1. The face of the law, would be helmeted soldiers bearing arms, and placed at strategic positions, throughout the land. Inevitably this would be preceded or accompanied by the neutralisation of principal leaders of the old order in various ways. A show of force through military parades and civilian demonstrations of support is invariably organised.

persuasion. The party and auxilliary organisations are used as well as the direct media such as press, radio and television; and the latest research in psychology are drawn on.¹

All propaganda acts are invariably put forward in the name of higher principles, socialism for example.² In practice, however, personalities and power politics play a large part. Effective use of propaganda machinery may sometimes require glamour and the use of symbols. But too frequent use of such methods tends to draw attention away from principles which may be replaced by or confused with cults. When this happens ends and means get mixed up and the medium becomes the message. This does not pose a threat to commercial advertising - the "tiger in the tank" approach has always the same end, i.e. sales and more sales. The criterion is novelty and if the "tiger" is replaced by a "panther" there will be no public outcry. But in politics the means of social ends may be elevated to the realm of values desirable in themselves and thus complicate the picture.

What of the citizen's part in all this? To some political scientists the citizen is an individual participating in social

1. An enlightened observation of advertising techniques shows that commercial salesmanship owes much to the lessons of political propaganda and vice versa. One salient feature is repetition, another is imitation.
2. Just as the battles for political rights were fought in the 17th and 18th century against "divine rights", in the name of natural law.

life through the medium of groups. He is a citizen "much more through his productive activity in the economy and in culture¹ than through the expression of his opinion." The position of the citizen in transitional African societies today cannot be defined so easily. There are two forces claiming his loyalty: on the one hand the traditional forces of kinship groups from which even the educated elite have not escaped completely;² on the other hand the modern state with all its new attractions.

The modern state makes demands on the citizen just as the Lineage group did, so that his place redefined in a modern setting as a member of a group acquires a new significance. Where the "mobilisation approach" has been adopted the demands³ may be greater and channelled for productive efforts. The individual plays the "rules of the game" - old and new - for various reasons: economic, social, psychological. The individuals making up the mass of the new African societies

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1. Cf. J. W. Lapierre, 'Le pouvoir politique', Paris Presses Universitaires de France, Coll. Initiation Philosophique, 1953.
 2. In his traditional setting the African citizen fits in very well with the definition which makes membership of a group the key factor. Cf. e.g. I.M. Lewis, 'A Pastoral Democracy' in which he explains the practice of collective vengeance in Northern Somalia in terms of self help as "canalised by lineage affiliation and given structural definition through the complementary principles of clanship and contract." This is further explained by reference to "the ecological context of acute competition for sparse resources, and in the abrogation of individual responsibility through group loyalties." I.M. Lewis, A Pastoral Democracy, Oxford U.P. (1961) p.242.
 3. In parts where there is a long history of feuds and wars, latent aggression can thus be usefully channelled for productive purposes. Cf. I.M. Lewis, op.cit. pp.242-65.

participate in their new roles often with enthusiasm. This is a blessing, in that it is needed for new countries in the process of growth. But certain of its aspects also pose a dilemma connected with the question of authority which in the newly formed states, as already stated, is hierarchically organised and highly concentrated at the top. The question can be viewed at two levels. Firstly from the point of view of the citizen's creative participation in politics the system tends to exclude large sections of the population from the exercise of political power, because it is hierarchic and concentrated. This becomes the more significant in view of the ²gen²eral absence or underdevelopment of infra-structure (including voluntary associations) at the local levels outside the cities. This, as Edward Shils has aptly put it, "deepens the silence in the countryside in matters of day to day political concern."¹ The political party thus becomes an all-purpose organisation supplying the want of absent infra-structure. But there the danger is that where disenchantment with the centre sets in, the party activists may have to deal with the problem of apathy, since the centre and the party² are identified. But more of this later.

Secondly the problem may be viewed from the point of view of the abuse of power. The power originally held in trust for

1. Edward Shils, op.cit. p. 28.

2. Chapter Six~~on~~.

a definite cause may be enjoyed for its own sake or held too long and used for time-serving panaceas in^{the} face of unpleasant social and economic realities. More specifically, the one-party state and the strong centralised executive which it entrenches may lead to the emergence of a self-perpetuating oligarchy on whose memory the perquisites of office play a trick as to its original mission. The oligarchy may in turn start playing a series of "confidence tricks" on the public, excusing or justifying certain acts or commissions, and, in general, not paying sufficient attention to the public good. In such circumstances ideology, socialist or otherwise, can be used as a smoke-screen to conceal the reality. Nor is it inconceivable that this may happen when the leader and a few of his closest colleagues are honest and dedicated men convinced that the best effort is being made by all concerned. For example, Colonel Afrifa, one of the authors of the military coup who deposed President Nkrumah, has written:

"Nkrumah's new class promised to abolish social differences but it increased them by acquiring the products of the nation's workshops and by granting privileges to its adherents. It promised loudly that it was fulfilling the historical mission of the 'final' liberation of the Ghanaian from every misery, but in reality it acted exactly in the opposite direction. Nkrumah's new class led a life of opulence and extravagance in contrast to the growing misery to which the rest of the country was being subjected." ¹

1. Colonel A. A. Afrifa, 'The Ghana Coup', (London Frank Cass, 1966), pp.84-5.

But even Afrifa, a bitter opponent of Nkrumah, nowhere mentions anything hinting that Nkrumah himself was guilty of "a life of opulence and extravagance."¹

The truth is that one-party regimes have an inherent tendency to create a "new class" in which a handful of "palace" favourites have control over the access to the executive Chief of State and over government policy and action. The concentrated and centralised power facilitates the emergence of such a "palace regime" by laying emphasis on the role of the President as the centre of new loyalty and national unity which in itself is a desirable thing. The very factor which gives dynamism to such a system may also be the source of its weakness. An important weakness at critical times in the life of such a regime is that it makes the office and the man vulnerable for removal and with him the collapse of the system.

1. The Ghana coup is discussed in Chapter Eight. At this stage it must be said that the gap between the new elite and the masses which Afrifa describes is not peculiar to Ghana, and Nkrumah's domestic economic and social policy (e.g. industrialisation) and the greatly augmented role of the state in this activity is worthy of a closer and more serious analysis by people who are free from a subjective involvement like Afrifa's. Afrifa who claims to come from a long line of Ashanti chiefs (op.cit. p. 43) believes that chieftaincy should do exactly what Nkrumah was trying to do:

"...It (chieftaincy) is the embodiment of our souls. The chiefs are traditional focal points of a people's collective activity. They are the rallying-point of our national endeavours. It is in these roles that chieftaincy provides the momentum for our people's advancement."

(op.cit. p. 116).

And thus may end a political experiment without being given a chance of success.

That it may create temptations for military adventures, when things go wrong, can be seen from the series of coups which have taken place in the last two years. The ease with which a centralised power-structure can be demolished may be illustrated by these coups, as we shall see. Colonel Afrifa adds poignancy to this point when he writes:

"On my arrival at the Accra Airport from the Congo in 1962, I was to lead the men to Tamale, our destination. I paused for a moment and reflected. Should I throw this troop of three hundred men into Flagstaff House and stop the rot from continuing? Should I not by military action stop Kwame Nkrumah from leading this country towards communism?..."

He hesitated, he tells, us and abandoned the idea, because his ammunition supply was limited, and ^{because} ~~that~~ if he failed he feared ¹ he would implicate his commanding officer.

If anything can be learnt from the recent series of military coups, one imperative is the need to introduce some "safety valves" into the one-party state without affecting its dynamism. African politicians (like all politicians) never tire of making claims that all is being done in a democratic way. As an illustration we may cite President Senghor's claim that the successive plans of economic and social development in Senegal were democratically prepared "in consultation

1. Op.cit. pp. 85-6.

with all the categories involved and (were) voted by the elected representatives of the nation."¹ It is of interest that Senghor, (like the Camerounⁿ planners) lays due stress on the need to motivate the workers and "fill them with a mystique of development"² (italics supplied). But there is no evidence to show that "the categories involved" or the elected representatives of the nation have put much thought to the task of evolving and refining a system of incentives conducive to change and generally acceptable.

Lastly we must mention (or rather reiterate - though in a different form) the question of mandate and control, and the relation between these two. When the emphasis is on effective government the requirement as to responsible government pales into insignificance, if ~~it is~~ not completely forgotten. Formal provisions on this need to be backed by extra-constitutional factors, if they are to have meaning. Responsibility should not be conceived in terms of opposition or obstruction, but rather in creative and corrective terms. The need for efficient government and a united nation has motivated constitutional predisposition in favour of parliaments working in co-operation with - indeed dominated by - the Executive. The White Paper on the draft Ghana Constitution of 1960 put the matter thus:

1. Cf. L. S. Senghor, op.cit., p. 12.

2. Senghor, op.cit., p. 16.

"The draft constitution ... has been designed to meet the particular needs of Ghana and to express the realities of Ghana's constitutional position. It is therefore proposed that the actual Head of the Government should be the President of the Republic... It is the Government's view that it is essential in the interests of strong and efficient government that the President and the Assembly should work as one and that this can most effectively be secured by constitutional provisions which link the election of the President to the election of the members of the National Assembly and which provide that if the National Assembly and the President disagree the issue can be decided by a general election."

The chapter on Executive presidencies will demonstrate that in nearly all cases the presidential mandate_x and power is so provided for that it overshadows supervisory functions of the legislature. But only those who are used to view politics in static terms will dismiss the arrangement as authoritarian.

(ii) Social Problems

As already explained the main aspect of economic development in transitional societies is the disintegration of the traditional economy. This process necessarily involves population movements from the traditional agricultural area to the modern urban areas, and that in turn brings social problems with it. The political system as a mechanism of 'adaptation and integration' must of course take cognizance of this fact, and part of the use of planning must be (a) to anticipate the social problems that go hand in hand with economic development, and (b) to devise the means for solving them.

The question is what does "solving" the problems mean, and how can the new states, who are already burdened with the problems of the present cope with future inchoate problems? The answer to the first question briefly is that with general movement from a traditional social order there can be a decline in certain values without an adequate substitution of new ones - without re-integration to a new system of values. This must be provided for; otherwise the situation can get out of hand.¹ At a different level, it has been argued by some observers that the characteristic trend is a movement from a status-oriented society to one based on individual material benefit.² This will be true of societies where the dominant economic system is unplanned private enterprise or inadequately planned mixed economy without the concomitant social planning. This is not the place to pass a value judgment, but those who have drawn conclusions that the cash-nexus is going to be the predominant or the only value-orientating factor, must answer some questions if they are to be spared the charge of making value judgments on the basis of insufficient evidence. The question,

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1. The rising rate of school-leavers and of influx to the towns, and delinquency is one example 'and a foretaste of things to come.' Cf. Archibald Callaway 'Unemployment among African school-leavers'. The Journal of Modern African Studies, Vol. 1, No. 4 (1963).
 2. Martin Kitson 'Political Change and Modernisation', The Journal of Modern African Studies, Vol. 1 No. 4 (1963) p.425-44. Cf. also Guy Hunter 'Constitutional and Administrative Systems of New States' - Social Aspect, paper presented to the 33rd study session of the International Institute of Differing Civilisations (Palermo, 7-10 April 1963).

which is beyond the scope of this study to answer, is of general interest in the debate about African socialism, and it is whether the new systems in Africa can succeed in transforming or recapturing the positive aspects of traditional African social relationships. One thing seems to be certain: Africa need not go through the social nightmare of the industrial revolution, of what John Stuart Mills has called the "unwilled residue of the economic will." In this field the study on African customary law undertaken by lawyers and social anthropologists is of vital importance in helping social planning. If one may be forgiven a temporary lapse to preach: the duty of these scholars and others has¹ not ended, and certainly the interest and fascination of the subject should be as absorbing as the problems involved in it are important for the African leaders. But here, as in many fields, political leaders can only inspire and guide; it is the leaders of opinion in various sections of the population and particularly among the educated elite who should think more deeply about the subject and contribute to its solution. It is a complex problem and generalisations on it can be dangerous.

1. The predicament of lonely old people in New York living in hotel room by themselves is one index which may help strengthen the belief that some "new values" are not necessarily good. The cash-nexus cannot provide answers to such problems.

CHAPTER TWO
HISTORICAL INTRODUCTION

Those countries of Africa which have been under colonial rule are said to have a "dual past"¹ which they have inherited upon gaining independence. Mention has been made in the last chapter of the advent of some ideas and attitudes in relation to the colonial experience. Much of this development took place as a negative reaction to that experience, but there were also positive aspects. Similarly much of the pre-colonial social structure has persisted, albeit marked with the imprint of the colonial rule. Hence the necessity of making reference to this dual past. For our purpose it is essential to make brief surveys of (1) the traditional political system, and (2) the colonial system. The constitutional form and function of the colonial executive is an archetype from which the independence constitutions were patterned. Therefore the survey of the colonial executive will consist of a narrowed focus on the constitutional structure.

1. Cf. e.g. George Balandier, 'Le contexte sociologique de la vie politique en Afrique Noire', *Revue française de science politique*, IX, 3 (1959), pp.598-609.

1. The Traditional System

Historical and anthropological studies have distinguished several types of societies. In Africa they have been roughly divided into two categories. First there are the centralised and hierarchically structured societies exemplified by the Ashanti of Ghana, the Hausa-Fulani of Nigeria, the Amhara-Tigré of Ethiopia, the Baganda of Uganda and the Zulu of South Africa. Then there are the decentralised egalitarian societies to which belong the Nuer of the Sudan, the Logoli¹ of Kenya and the Tallensi of Ghana. Fortes and Evans-Pritchard have written that the first group are societies which have

"centralised authority, administrative machinery and judicial institutions - in short a government - and in which cleavages of wealth, privilege and status correspond to the distribution of power and authority,"

while the other group consists of societies

"which lack centralised authority, administrative machinery and constituted judicial institutions - in short which lack government - and in which there are no sharp divisions of rank, status and wealth." ²

They go on to remark that those who consider that a state should be defined by the presence of governmental institutions will regard the first group as primitive states and the second

1. Cf. M. Fortes and E. E. Evans-Pritchard (eds) 'African Political Systems', Oxford University Press, London (1967).

2. Op.cit., p.5.

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group as stateless societies.

The classification into types does not of course represent empirical reality with exact scientific precision, as human societies cannot be classified with that precision. Two societies or two types may have similar features in one respect and may differ in another. Nor is the use of concepts like 'primitive' always helpful. But classification of societies with reference to more specific aspects such as political organisation does yield useful results. There are certain dominant features which make comparison and contrast meaningful. Such is, for example, the presence of a chief or king in the first group of African societies or his absence in the second group which is the reason for the use of the term 'acephalous' to describe them.

In the first group of societies there is a chief or king who acts as the focus or centre of the whole system. He would invariably have a council to advise him in many matters. An example of this is the Lukiko of the Kabaka of Buganda. The Lukiko was formerly presided over by the Katikiro, who was the chief Justice and 'Prime Minister'. There is a striking resemblance between the function of the Katikiro of the Kabaka and that of the Afenigus of former Ethiopian kings. 2

1. Ibid.

2. Cf. Margery Perham, 'The Government of Ethiopia' (1948) p. 145 and David Apter, op.cit. p. 44.

The king normally presided over his council in both cases, and the same is true of the Asantehene of the Ashanti as well as^{of} the Sultan of Morocco. But even in one particular feature of political systems belonging to the same category, comparisons sometimes break down owing to differences in history. For example, the Islamic religious influence in the case of Libya and Morocco marks off the kings of these two countries in some respects, notably in the degree of concentration of power.¹ The spread of Islam in North, East and West Africa has introduced a distinct influence which can be seen in the political life of people converted to it. Its doctrine of one God and of the paramountcy on earth of his Messenger, acted as a unifying factor which transcended the divisions and conflicts among tribes, though its gospel² was spread as much with pros^elytising as with the sword.

The sultans or caliphs have been noth heads of the state and of the Maamounin (the community of believers). The Christian kings of Ethiopia, too, professed the orthodox Christian faith and as suppliers of temperal aid to the Church exercised an influence on the leaders of the church. But they were not heads of the church.

In Chiefly societies of sub-Sahara Africa, where power

1. For a short history of the advent of Islam in Africa, cf. Roland Oliver and J. D. Fage, 'A Short History of Africa' Penguin African Library (1966) pp.66-91.

2. Cf. Oliver and Fage, op.cit. pp.63-76.

was centralised, the Chief was a member of the most anciently established powerful family, or a religious leader. Invariably there were several such independent chiefs within the same ethnic group. Typical examples of this are the Yoruba Chieftaincies in Western Nigeria. The essence of the Chieftaincy was that it was an extended family grouping clustered round a chief. One of the salient traits of a Chieftaincy was the presence of an equilibrium of authority and responsibility. The authority of the Chief was modified by the influence of the extended family, particularly the more powerful among them, and often also by that of other groups. This balance of authority and responsibility has deep social and political implications. The Chief exercised his function on trust on behalf of the community. Much of African law bears this out. Perhaps the best illustration of this is the role of the Chief as the custodian of rights in land matters. There was no question of absolute ownership of land and the Chief could not at any time alienate land, even though it might be held in his name. A Nigerian Chief put this matter in a nutshell when he said to the West African Lands Committee in 1912:

"I conceive that land belongs to a vast family of which many are dead, few are ¹ living, and countless members are unborn."

1. ~~XX~~. quoted by T.O. Elias in, 'The Nature of African Customary Law', Manchester (1956), p. 162.

In the second group, there are no traditional rulers or courts set up permanently. Whenever a matter of importance comes up the elders of the community would summon the whole village community to a meeting and there decide the matter. Where an execution of the decision^{was} required this would be delegated by the village council to picked young men. The village council is not to be understood, however, as a permanent institution. It was set up as occasion demanded, as for example ^{when} a crime disruptive of social cohesion such as murder had been committed. The mechanism of law suit and enforcement followed a common pattern.¹ The "government" in such communities was conducted in a more casual fashion, with less precision in the division of function than in chiefly communities. There was less pomp and decorum, but there was an inner order and tenacity to immemorial custom. Nor is there an ^{absence} of the equilibrium we noted with regard to chiefly communities.²

There can be no question that even the most elementary societies had their own systems of government and law. The original view that in a strict sense the Nuer, for example, had no law suffered from the narrowness of the Austinian view

1. Cf. Gunther Wagner, 'The Political Organisation of the Bantu of Kavirondo' in M. Fortes and E.E. Evans-Pritchard, op. cit. pp. 217-222.

2. Ibid.

of law as a command of a political superior. Law as an expression of desired conduct exists in all these societies and the value of anthropological studies has been in probing into the various factors that make people obey the decrees of unwritten immemorial custom, particularly in the absence of a physically identifiable permanent authority and a hierarchy of organisation implementing orders. A clue to the answer comes from anthropological enquiries. Religious cults play an important role, and the presence of religious and ritual symbols more than made up for the absence of the governor and the police.

"Varied ties of friendship in primitive societies were expressed in allegiance to a common ritual symbol. The people participated in ceremonies to secure the good things of social life—food, children, health, success and peace over an area. The congregations which joined in these ceremonies often established yet another set of linkages, since they drew their members from diverse groups. Or the ceremonies were so constructed that every representative of a political group had ritual powers, but these powers were exercised in a cycle of ceremonies in which every group's representative took part. All had to act if each was to be prosperous. The ceremonies aimed to achieve communal prosperity." ¹

These religious cults and rituals interpreted in terms of a general theory of religion and the unwritten laws interpreted in terms of a general theory of law yield a fruitful result. One common feature to all these societies is that they are

1. M. Gluckman, "Political Institutions", in "Institutions of Primitive Societies", (ed. Evans-Pritchard), 1963, pp.72-3.

based on a family unit which is extended with a strong emphasis on descent from a common ancestor creating a lineage. Authority depended on such lineage, and the group interest and solidarity which it needed.

As for the history of these societies,

"the verdict of modern scholarship is that the past of Africa is both long and interesting and contains the record of a continuous and in some significant ways highly successful ¹ development over several thousand years."

Africa's political and social history is old, and has involved the deployment of "a considerable fund of common political ² ideas."

The debate on the origin, movements and development of African peoples, the formation of the various states and the adventure of ideas on political organisation in the continent is by no means closed. Some tentative conclusions have been drawn, nevertheless, and it is possible to draw upon such conclusions. Oliver and Fage, for example, consider that the adventure of the "common funds" of political ideas has a pre-Christian and pre-Muslim origin and that it can be traced to Meroe. According to this view the movement has followed interior lines running out in two long arms westwards and southwards from a common point of origin in the Upper Nile

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1. B. Davidson, 'Which Way Africa', Penguin, London, 1964, p.19.
 2. R. Oliver and J. D. Fage, 'A Short History of Africa', Penguin, London, 1966, p. 49.

Valley. They call the source the "Sudanic" civilisation, and they believe that the ideas of ancient Egypt formed¹ part of this civilisation. Meroe which was at the height of its power during the first two centuries of the Christian era was conquered by Axum, thus adding further elements to² the "Sudanic" civilisation. On the nature and extent of the influence of this civilisation on the formation of African institutions Oliver and Fage have said this:

"Stretching right across sub-Saharan Africa from the Red Sea to the mouths of the Senegal, and right down the central highland spine of Bantu Africa from the Nile sources to Southern Rhodesia, we find the axis of what we shall call the Sudanic civilisation. The central feature of this civilisation was the incorporation of the various African peoples concerned into states whose institutions were so similar that they must have derived from a common source. At the head of such states there were kings, to whom divine honours were paid and to whom divine powers were attributed. The king led a life sedulously secluded from the common people; he gave public audience from behind a curtain; not even the most intimate of his courtiers might see him eat or drink. Each year the king hoed the first plot of farming land and sowed the first seeds. Upon his physical well-being depended the fertility of the land and the regular flow of rain. The great rituals of these divine kingdoms tended to be associated with the new moon, and sacred fire was almost everywhere kept burning and carefully guarded as the main symbol of the king's life and authority. The divine king's subjects might number anything from a few thousand to a million, or even more. Such kingdoms tended in fact to form in clusters, with one or more large kingdoms at the centre of

1. Cf. Roland Oliver and J. D. Fage, op.cit. pp.49-50.

2. Ibid.

the cluster, and a host of smaller ones scattered around the peripheries. But on however small and ineffective a scale, such kingdoms would nearly always show at least vestigial traces of a strongly centralised political structure, contrasting sharply with the loose family or lineage institutions of those societies which had never been organised in this way. . . . Around the royal person circled a galaxy of titled office-bearers, as numerous as the economic organisation of each particular state was able to support. . . . At the head of the administration were a few high officials, often four in number. From these depended a descending hierarchy of provincial chiefs, often recruited from the pages, sons, or nephews of the great, who had been educated at the royal court. The main concern of such administration was the raising of tribute for the support of the king and of the semi-urbanised inhabitants of his capital. . . . External trade was always in some sense a royal monopoly. Artists, craftsmen, and other specialists were located at the royal capital. . . . In a very real sense, therefore, the 'Sudanic' state was a superstructure erected over village communities of peasant cultivators rather than a society which had grown up naturally out of them. In many cases such states are known to have had their origin in conquest; in almost all other cases conquest must be suspected." (Italics supplied) ¹

Early writers on African history, mostly Arab scholars have recorded the existence of 'Sudanic' states in at least ² three geographically widely spread areas of Africa. The

1. Op.cit. pp.44-46.

2. Oliver and Fage mention the record of the Moorish geographer Al Bakri of Cordoba who describes a pagan kingship ritual of Ghana; and Al Yaghubi who mentions the Kingdom of Kanem, lying to the north-east of Lake Chad, with its Zaghawa rulers while the tenth century writer Al Muhaffabi, made it clear that this was a divine kingdom of the 'Sudanic' type. Also Al Masudi of Baghdad who journeyed to the East coast of Africa to Sofala in today's Mozambique in or about 922 A.D. recorded the existence of a substantial trade in gold and ivory, which was sent from Sofala to Oman and from there to China and India. The authors presume Masudi was referring to the Zimbabwe state. Cf. Oliver and Fage, op.cit.pp.46-48.

origins of the Hausa states, of Songhai and of many West-African kingdoms are attributed to the 'Sudanic' source. The historians indeed argue that there is sufficient traditional evidence that presumes that with the development of Iron Age archaeology in Africa, with its methods of absolute dating, more fresh evidence will come to light, pointing to other centres of the 'Sudanic' civilisation. They point out that in Uganda, Rwanda Burundi, and the Kivu province of the Congo where the formation and re-formation of 'Sudanic' states can be traced through some five hundred years of traditional history, fresh evidence has been discovered showing the history of the states of that region to go back to earlier periods, nearer to the period of Zimbabwe and Katanga. They further speculate the possible discovery of comparative evidence from the South-western region of Ethiopia notably Kaffa and Enarea. In the whole horn of Africa, pre-Christian Axum¹ is presumed to have had a prototype of a series of 'Sudanic' states established to exploit the gold and ivory of the north-eastern interior and it was probably from that direction that the first miners and ivory-traders reached the Lake regions, Katanga and Rhodesia.

In the process of state-formation and reformation some African societies seem to have escaped the impact of the

1. Ibid. pp.48-52.

'Sudanic' civilisation, and remained at a simple stage of organisation, while others moved into a complex pattern of bureaucratic authority. Many of the latter grew into imperial powers such as those of the Songhai, Mali, Ghana and Hausa-Fulani empires. As Basil Davidson has written, this process,

"began most clearly of all in those regions where easy movement by man and horse made military and political enclosure possible, and worthwhile: in North Africa, in the wide grasslands of the Sudan, and, not long after (though seldom with the horse), in the forest fringe of Guinea and, later again (but never with the horse), in the vast woods and prairies of the centre and the south." ¹

One common trait of African kingships is, as already stated, the idea of sanctity and the belief that the king or chief represents parental authority and is the link between the community and its ancestors. His association with the well-being of the community had consequential sanctions. When misfortune befell the community blames were attributable to him. Misfortune befalling him was thought to affect the crops or cattle or the rain. Such sentiments are psychologically so deeply rooted that even when hereditary monarchs are replaced by elected presidents some of the aura still attaches to them.

Apart from sanctity, another common trait is hierarchy. But there are varieties in the type and degree of hierarchic

1. Op.cit. p. 22.

organisation. In some (e.g. the Yoruba) the administrative hierarchy consisted of men who represent powerful lineage groups in the society. In others (most of Bantu kingdoms) the hierarchy consists of almost exclusively relatives of the king. In the third variety, "commoners" were chosen, presumably because they lacked the independent basis of power¹ which could make them potential rivals.

Where there have been conquests and empires built on the basis of such conquests the empire-states comprised of large scale political units. Within the empire-state were kingdoms based on ethnic homogeneity, while the central political structure of the empire had a complex system of techniques of subjugating and administering large and disparate populations. There have been several examples of such empire-states in Africa. The medieval period from the ninth to the sixteenth century produced three famous empire-states: Ghana, Mali and Songhai, and the nineteenth century gave rise to two others in West Africa, led by El Hadj Omar and Samory Touré.² Trade was one of the techniques used by the ruling group of an empire-state to accumulate the wealth necessary

1. Cf. Lucy Mair, 'Primitive Government' Penguin Books (1966) pp.171-180 and generally Lloyd A. Fallers 'Bantu Bureaucracy', (Chicago and London 1965).

2. Cf. William J. Foltz, 'From French West Africa to the Mali Federation', New Haven and London (1965), pp.2-5.

for peaceful or enforced preservation and expansion of the empire. Also certain vital commodities were used as means of control. For example the control of the distribution of salt was used as a technique of imposing imperial will on recalcitrant populations. The medieval empires owed a debt to Islam for the introduction of such techniques. For example, in the Ghana empire -state the pagan Soninke rulers used Muslim experts as councillors on commercial and administrative matters, and trade was dominated by Muslims. Also, as already mentioned, Islam as a universal religion facilitated the administration of different ethnic groups, by separating governmental political roles from tribal (local) religious offices. The success of the medieval empire-states may also be attributed to their ability to create a bureaucracy for territorial administration without interfering too much with the conduct of local affairs or attempting forcible social integration. All this limited causes for revolt.¹

Variety in the structure of African kingship is thus a fact which cannot be ignored, and this is explicable in terms of the advent of the system at a comparatively later stage in African history and its super-imposition over pre-existing non-hierarchically organised societies. Some of the pre-existing societies must have successfully absorbed it and infused it with their own culture. This may explain the fact

that in some states the general social pattern of the society is so closely related that the kingdom gave an appearance of the village writ large. But the majority of kingships were unrelated to the smaller scale social pattern.

The variety may also be seen in the function of the king or the chief and the ideas and sentiments about his responsibility. In the Kingdom of Kanem as described by Al Muhallabi, the King had absolute power over his subjects and could take what he liked of their belongings.¹ This contrasts with Al Masudi's record of the state near the mouth of the Zambezi river, a state governed by an elected king, who could² be deposed if he abused his power or failed to use it wisely. This is characteristic of African kingships or chieftaincy among a wide range of African peoples. Rattray has recorded a similar tradition for the Ashanti chiefs. The words of admonition which accompany the occasion of enstoolment (accession to the throne) are highly significant, in this connection, and worth quoting:-

Tell him that
We do not wish for greediness
We do not wish that he should curse us.
We do not wish that his ears should be harsh
of hearing.
We do not wish that he should call people fools
We do not wish that he should act in his own
initiative

have found a point of balance between the waters and the scorching sun on one hand, and the demands of cattle and a little cultivation on the other. The trouble with the Nuer, if it is a trouble, is that they have succeeded so well in attaining a stability which calls within itself for no change at all." ¹

2. The Colonial System

European contact with Africa was not the first of its kind in the history of the continent. The whole of East Africa was long involved in trade with the eastern world. North and West Africa were also involved in a two-way traffic with each other. The trade routes running from East (from Zula on the Red Sea coast of Ethiopia, through Axum and Meroe) across the Sudan to West Africa ^{as} are a proof of earlier continental link. With the advent of Islam in the whole of East, North and West Africa and the conversion of many chiefs a new and important factor entered the political life of Africa. One result of this is a radical breakdown of tribal barriers and the formation of new type states through the religious ideology of Islam. An example is the Hausa-Fulani state. The readiness with which people accepted this cannot

1. B. Davidson, op.cit., p. 26. The author goes on to say that much of the story of the African Iron Age had been one of perpetual movement through contrasting climate, soil, vegetation and therefore means of livelihood. "Stability and change play an underlying counterpoint in the African song." p. 27. For a concentrated study of a group of Kingdoms of Africa, see Jan Vansona, 'Kingdoms of the Savana', London, 1966, especially pp. 28, 37, 41 and 156-174.

be simply explained by reference only to the radical methods of Islam in converting peoples. The acceptance of the Sultans as absolute rulers by people of Africa used to more democratic systems is also remarkable. Some writers of African history have argued that the African is more agreeable to monarchy¹ with absolutism and sacredness attached to the ruler. But this is too naive an explanation. Islamic influence and its spread in Africa can best be explained by the absence of a gap between the ways of the conqueror and the conquered. Islam embraced within it all who accepted it.

The Europe which conquered Africa was technically far superior to the conquered continent. This technological gap had political and cultural implications. It proved crushing to much of the traditional society. True, many philanthropic people and organisations worked to avoid or minimise disruption of the social life. But the total effect of colonial rule was one which undermined the basis of the traditional order. There is no question, in a material sense, about the by-product of modernisation which it brought to the African. And this is not limited to roads and railways. The effect of the colonial rule is nowhere more striking than in the field of government.

The legal status of the conquered state was changed; it became part of a colonial state. Wherever there were

1. Cheik. Anta Diop. 'L'Afrique noire précoloniale', p. 59.

traditional rulers they were turned into agents of the colonial state. The British colonial policy known as indirect rule favoured the preservation of their status and their traditional jurisdiction. This meant the recognition of a dichotomy of law, one (the English introduced law) applying to the ex-patriates living in the area, and the other, (the customary law) applying to Africans.¹ The French colonial policy was a direct rule with the French law extending to apply to the Africans - a process of assimilation.² The Belgian policy sought to make use of both methods, but tended to follow the French method, except in Rwanda Burundi.³

The difference between the direct and indirect method has sometimes been exaggerated. A French historian has recently written that the French colonial rule in Africa did not really practice a system of 'direct' administration. They had recourse to the chiefs as intermediaries. The main difference lies in the legal status of the chiefs which, in the French rule, took the form of complete subordination. Also

1. Cf. A. N. Allott, 'Essays in African Law', 1962.

2. J. Gonidec, 'Droit d'Outre Mer', 1959.

3. J. Buchmann, 'L'Afrique Noire indépendante', p.74. An interesting debate on this subject is found in Hubert Deschamps' article: 'Et maintenant, Lord Lugard', in 'Africa' (London) XXXIII, 1963, pp.293-306, and a reply by Michael Crowder, 'Indirect Rule - French and British Style'. Ibid. XXXIV, 1964, pp. 197-205. Lord Lugard's name is almost synonymous with indirect rule and "the ~~double~~ mandate", which was adopted largely as a result of his initiative in Nigeria.

their diminished juridical status had political implications. It paved the way for their eventual overthrow when a well-organised mass-party emerged, as the P.D.Co did in Guinea. It must also be remembered that the British practice of indirect rule was not consistently enforced.

The establishment of the colonial state marked the beginning of political changes of crucial importance. The traditional holders of authority were required by the colonial state to maintain law and order and general stability among the African population. For this task they were reinforced in their traditional position with the backing of an invincible power. At a time when there were as yet no modern-style political leaders to challenge their authority, the traditional rulers gradually developed an element of absolutism in their rule, though in the eyes of some the fact of their subservience to a foreign and more powerful authority derogated from their own authority.¹ The establishment of colonial rule was not always achieved without resistance. The Ashanti Wars, the Zulu Wars and the heroic resistance of Samory Touré, to mention the more outstanding, are well known in the annals of colonial history (or rather anti-colonial history).

Where direct administration was introduced the position

1. Cf. P.J. Idenbourg, "Les nouveaux états africains et les normes démocratiques occidentales", *Revue juridique et politique d'outre mer*, 1961, no. 2, p.198.

of traditional rulers was much weakened. Even there, however, the ruling class of the pre-colonial days had not disappeared in all cases. The policy of direct rule followed by the French did not mean the complete abolition of traditional rulers who were used as points of contact with the indigenous population whenever occasion demanded. But they were divested of their legal status as rulers.

In the ex-British territories the 'native authorities' were given legal power to administer customary law to Africans. This legal recognition of their traditional jurisdiction in customary law gave them sufficient incentive to co-operate as administrative "transmission centres" and agencies of social control. This function was primarily political (maintenance of order and stability), and was crucial during the period of pacification which may be said to have lasted roughly up to 1920. The mode of inducing traditional rulers to adjust themselves to the new colonial state by rehabilitating them in a new form as agencies of law and order represented a decisive feature of political change in Africa. Law and order are means of achieving certain desired conduct and patterns of relationship. But they are not always considered merely as means. They may be transformed in the minds of their beneficiaries into the realm of values. When that happens those who hold positions of authority would when the time comes seek to join the centre of law-making. That, in the colonial

situation, was the Governor, and his chief instrument of policy-making - the Legislative Council, and later the Executive Council.

The Executive Under Colonial Rule

There has been a good deal of scholarly writing on the history of the Legislative Council, and its offspring the Executive Council in ex-British Africa.¹ The same is also true of the Executive in ex-French Africa.² We will now give brief accounts of the two.

(a) Ex-British African territories

In the ex-British territories of Africa the development of the Executive followed the pattern of what was called "constitutions of Crown Colony", in contra-distinction from the original colonies (i.e. North America, Bermuda and the West Indies) and the old dominions (i.e. Australia, Canada, New Zealand and South Africa), although the latter were also colonies at the beginning.

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1. Cf. Martin Wight, 'The Development of the Legislative Council' 1606-1945 (London, 1945); Sir Alan Burns (ed); 'Parliament as Export' (London 1966); H.V. Wiseman, 'The Cabinet in the Commonwealth' (London, 1958); S.A. de Smith, 'The New Commonwealth and its Constitutions', (London, 1964), pp.38-76.
 2. Cf. P.F. Conidec, Droit d'outre-mer, Vol.1, pp.143-150; and pp. 453-465. And F. Berge, "Le Sous-secrétariat et les sous-secrétariats d'état aux colonies: histoire de l'émancipation de l'administration coloniale, (Paris, 1962). William J. Foltz, 'From French West Africa to the Mali Federation', (New Haven and London, Yale U.P. 1965).

In the government of the Crown Colonies there was the Legislative Council, a unicameral body whose members were originally appointed by the Crown, the majority being civil servants known as official members. The official members were bound to support the policy of the Governor, as representing the Crown. The Governor who was the Executive in the colonial territory could thus control the Legislative Council.¹

The composition of the Legislative Council was altered, gradually leading to a majority of unofficial (i.e. non-civil servant) members. The Governor's control was, nevertheless, preserved by investing him with "reserve powers" which allowed him to override the Legislative Council, and to enact legislation without the consent of its members. This was in addition to his power to veto legislation proposed by the council.

The unofficial members of the council in some territories included members of the European community as well as Africans. The former were appointed to represent various economic interests - banking, mining, planting, shipping or trade - sometimes on the nomination of the Chambers of Commerce and similar organisations. Africans were not always included in

1. The constitutions of the first English colonies of settlement, provided for representative government, following the English model, with a restricted franchise. cf. Sir Alan Burns, op.cit. p. 14.

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the Legislative Councils.

An important stage in the evolution of the Legislative Council (of Crown Colony) system was reached when some members of the council entered that body on the basis of election. From there the next logical stage, with more demands for representation, was when the elected members outnumbered the other members of the council. At first election was held on a limited franchise and generally only the principal municipalities were represented in each colony. For example the four Africans elected to the Legislative Council of Nigeria in 1925 (the first to be elected in tropical Africa)² represented the towns of Lagos and Calabar. The ultimate phase of the evolution of the Legislative Council was reached when all its members were elected representatives. At that stage the structure and orientation of the Executive Council, its offspring, begins to emerge, markedly different from its earlier form.

The Executive Council of the older dominions was an outgrowth of the Legislative Council. It was at first composed of the Governor and the official members (civil servants). The pattern of development was similar to that of the Legislative Council. Unofficial members were added later, from the Legislative Council. This enabled the Governor to bridge

1. In Kenya, for example, there were no African members until 1944. Ibid. p. 35.

2. Ibid. p. 35.

the gap between his office and the Legislative Council, and at the same time provided the "Assembly men"^{with} a measure of share in the formulation of general policy. But the Executive Council¹ remained a purely advisory body.

In the majority of African territories the Executive Council consisted at first of official members only, then of these plus unofficial members whom the Governor, in his discretion, could appoint if "suitable candidates" existed² among non-European populations. Towards the end of the Crown Colony system, before internal self-government, elected members of the Legislative Council were included in the Executive Council and made responsible for certain departments of government with two or three officials serving with them as advisors to the Governor, who presided over the Executive Council meetings. This was a turning point from the point of view of transfer of executive power to Africans. Some of the African leaders were, for the first time, let in to the inner council of the Executive with access to and partial control of government departments. It showed them the problems as well as the possibilities of Executive authority. But even at that stage the Executive Council still had advisory function only.

As regards the procedure of the Executive Council at a

1. M. Wight, op.cit. p. 126; Wiseman, op.cit. pp.16-20.

2. Kenya was an exception to this. Unofficial members there were appointed for a fixed period up to 1954. cf. Wiseman, op.cit. p. 19.

stage when its function was purely advisory, normally questions were explained by the departmental head concerned; there would then be a general discussion; the Governor would ask each member for advice in turn. No vote was taken, and¹ members could not themselves bring questions.

The ultimate stage in the evolution of the Executive Council and its transformation to a cabinet system is generally reached when all the members of the Legislative body are elected. By that time there would have been a crescendo of growing demands for more rights for self-rule, for complete transfer of power - demands made under the pressure of organised movements for independence. Every measure of transfer of power only helped to stimulate more demands followed by more concessions in a series of arrangements, which followed a similar pattern in all the colonial territories, with minor variations. A typical example is that of Ghana (the Gold Coast as it then was) which was the first to gain internal self-government and, later, complete independence.

In 1952, the Convention Peoples Party (CPP), Dr. Kwame Nkrumah's party, won a clear majority in the election to the Legislative Assembly. The Governor then consulted with Dr. Nkrumah in the choice of representative members for the Executive Council. The Coussey Committee had recommended that

1. Ibid., p. 21.

the Legislative Assembly should elect a leader and that members of the Executive Council should be appointed by the Governor in consultation with the leader.¹ The Colonial Secretary felt that it would be preferable for the members of the Executive Council to elect a leader of government business in the Legislative Assembly on the grounds that there was no developed party system.² But the clear majority obtained by the CPP convinced the Governor that it was more appropriate to take the course he took, which approximated to United Kingdom conventions.³ An amending Order-in-Council was soon passed to recognise the facts, and Dr. Nkrumah was appointed Prime Minister.⁴

The composition of the Executive Council continued until 1954 with official members present. In 1954, the Executive Council was replaced by a cabinet which became, as in all cabinet systems, the principal instrument of policy. It was the first cabinet in black Africa, and its birth was no doubt welcome by all sides, but not cheered by Dr. Nkrumah and his colleagues. It fell short of a proper cabinet in that, contrary to the demands of the CPP leaders, the cabinet was made responsible not to the Legislative Assembly (which the CPP controlled) but to the Governor.

1. Coussey Report, paras. 382 and 411.

2. S.I. 1950, No. 2094, S.15; cf. also Wiseman's comments, op.cit. pp. 29-30.

3. S.I. 1952 No. 455, S.5.

4. Cf. de Smith, op.cit. pp.55-63, for a discussion on the stages of internal government and the gradations thereof.

The desire of Whitehall to see English constitutional conventions implanted in Ghana is none the less clear. This was made clear specifically in respect of the appointment and resignation of the Prime Minister and the acceptance of his advice on other ministerial appointments.¹

(b) Ex-French African territories

The French colonies in Africa were grouped in two federations: the Afrique Occidentale Francaise (1895) and the Afrique Equatoriale Française (1910). The organisation of the latter was modelled on that of the former group which was itself modelled on that of French Indochina (1887).

Each administrative grouping was placed under a Governor-General who acted as intermediary between the central government in France and the colonies coming under his grouping. He took over a substantial part of the function formerly exercised by the Governors of each colony thus centralising the whole administrative system of the colonies. Algeria was kept as a separate administrative unit from the start (1834) with the appointment of a civilian Governor-General after a series of crises involving struggles between civilian officials² and military commanders, lasting some sixty years.

1. CMD. 9169, para 31; and S.I. 1954 No. 551.

2. Cf. Gonidec, op.cit. Vol.II, pp.180-192. French West Africa at the end of the nineteenth century consisted of four coastal settlements - Senegal, Guinea, the Ivory Coast and Dahomey. They were separated one from another and the principal link was a coastal steamer. Behind them in the interior lay a vast hinterland initially under military command.

The (coastal) colonies were governed by civilian administrators reporting directly to Paris and assisted in their decisions by an informal council of subordinate administrators, representatives of the local Chamber of Commerce (which had great influence in the government's colonial policy)¹ and local notables whom the governor saw fit to include. The first change came in 1895 when a Governor-general was appointed to oversee the organisation and administration of all the French West African possessions. Given the difficulty of communications his presence was not felt at the start. Then the Constitution of French West Africa (AOF) was promulgated giving the Governor-general the power to raise money for the Federal Government by taxing the imports and exports of the individual territories.²

The 1904 Constitution and decrees issued on March 30 and April 20, 1925 established the basic form of French colonial government. Under this system each individual colony was governed by a Lieutenant-Governor who administered it according to general administrative rules applicable to all the other colonies under the "high authority" of the Governor-general,

1. W. J. Foltz, op.cit. p. 16.

2. Decree of October 18, 1904. This decree and subsequent decrees established the territory of French West Africa including the interior which became known as French Soudan. Similar measures for French Equatorial Africa were started in 1910.

local circumstances being taken into account. The Lieutenant-governor (who became full-fledged governor after 1937) was advised by a council known as the Conseil d'Administration, except in Senegal. This council was composed of appointed senior civil servants, and, in the Ivory Coast, Dahomey, Guinea and Soudan included unofficial members chosen by the colony's Chamber of Commerce and by a restricted African electorate consisting of chiefs, licensed traders, property owners and administrative officers of five years standing. It is considered that despite the restricted power of the Council it drew some of the significant elements in the African communities who were most likely to exercise influence in a modern setting into some sort of regularised relationship with the government at the territorial level. Some writers have expressed the view that the electorate was more extensive than that of the local government councils in the British territories, although the latter enjoyed more real power of decision.

In Mauritania and Niger the Council was composed entirely of official members, while in Senegal the position was unique.

1. In 1939 this was extended to include veterans of the colonial army and holders of certain licenses.

2. Ibid.

3. Cf. Cowan, *Local Government*, pp.52-53, quoted by W.J. Foltz, *op.cit.* at p. 12.

In Senegal, the four coastal regions had been granted self-government in the 1870's. The council in these regions consisted of popularly elected representatives and of members chosen by the administration-appointed chiefs of the interior populations. The council had quasi-legislative powers over financial matters, similar to the Conseil Général of a department in France. The Governor had veto powers. The colonies, with the exception of Senegal, were in no sense self-governing. Their government, like the French cercles, was part and parcel of the French administrative system with its headquarters in Paris.

Coming immediately above the Lieutenant-governor in the colonial hierarchy were the Governors-general of the Federation. Both the Governors-general and the Lieutenant-governor of each colony were appointed by the French head of state. They had the status of hauts fonctionnaires (equivalent to senior civil servants), and were strictly subordinated to the central government.¹ The Governors-general alone represented the French Republic - and had the right to correspond with Paris. The power exercised in the territorial administration was therefore by delegation of their powers. They accordingly had the right to intervene at any level they saw fit. The

1. The colonies came under the Minister for the Colonies and Algeria came under the Minister of Interior, under the third Republic.

prestige of the Governor-general counted for much in practice giving him effective power. The competent minister in Paris issued orders and instructions to the Governor-general in the form of circulars. But no ministerial decree could be put into effect in the colonies without the Governor-general's promulgation of an arrêté d'application explaining the circumstances in which it was applicable and indicating how it was to be put into effect. Again, all colonial budgets had to meet^{with} his approval before being submitted to Paris. The power of the Governor-general was further extended vis-a-vis the colonies in fiscal matters by a system of taxation which centralised revenues and enhanced his control over the colonies. His power vis-a-vis Paris was extended in that he could declare¹ a state of emergency, as occasion demanded.

There was a Governor-general's council called the Conseil de Gouvernement, which functioned until 1939. It consisted of a majority of civil servants who were mostly European. This Council's function was purely advisory and in fact its work was done by its permanent commission composed entirely of the Governor-general's own chosen men.

Above the Governor-general was the Colonial Minister who could rule by decree and who was also assisted by a

1. Cf. Gonidec, op.cit. ppl86-192; and W. J. Foltz, op.cit. p. 18.

superior council, the Conseil Supérieur des Colonies (after 1937, the Conseil Supérieur de la France d'Outre-Mer), with the same advisory powers as the Governor's Council. This council was composed of representatives elected by the French citizens and a few "native" notables from each colony, the deputies and senators of these colonies which had parliamentary representation in Paris, and several nominated members representing metropolitan and colonial interests.¹ Commercial interests dominated the Superior Council, since most of the colonial representatives were linked to the major commercial interests, and the Governor-general was the only man with the prestige and access to the minister to counter-poise their influence, if only in the interests of administrative efficiency.² The extent of the influence of commercial interests exerted itself even more at times of ministerial instability during the Third Republic.

The French attempt to impose a uniform and efficient administrative structure weakened and in many cases destroyed traditional political authority. France's mission civilisatrice implied that African cultures and political systems were inferior and that they must be replaced by a "higher civilisation" which would make Frenchmen out of Africans. The Governors-

1. W. J. Foltz, op.cit. p. 19.

2. Ibid.

general and the colonial administration over which they presided, did not therefore feel concerned to preserve traditional systems of political authority. There was little preparation of a modern African political order to take the place of the traditional system. As Foltz has pointed out:

"where tribal or village allegiance remained strong, it represented primarily allegiance to a social, not a political, order. If a focus for political loyalties was open to the Africans, it was that of a 'Greater France', a distant, vague idea unlikely to survive the shock of the increased direct African participation in the political process." ¹

Most Africans had little or no chance to participate in government of the colony which operated without reference to their wishes or needs. But with the opportunities opened for training (though limited) a new African nationalist elite ² was in the making.

By the end of World War II the political climate was changing; the growth of a hard-core of educated Africans and the anti-colonialist euphoria of the post-Atlantic and U.N. Charter period gave impetus to nationalist demands for

1. Op.cit. p. 20.

2. Foltz gives the figure of 71,000 students who were in schools of some sort in French West Africa by 1938, which represented a mere 3.2% of potential students. But the students were concentrated in the urban areas where they were able to acquire new skills. Very few attended university in France before World War II, but many attended the federal Ecole Normale William-Ponty, near Dakar. Ponty granted about 2,000 degrees between 1918 and 1945. op.cit. pp.20-21.

self-government. But there was little change in the political and especially executive structure after the war, except in nomenclature - the colonies being re-named "territoires d'Outre-Mer", after 1946. The federations of A.O.F. and A.E.F. continued without any change in the organisation and function of the executive in both. The conference of colonial administrators and experts held in Brazaville in 1944 set a tone for the granting of political rights that was to come, during the following decade.¹

In the debate on the constitution of the Fourth Republic, there was much talk of radical changes in French colonial policy, but the outcome did not match the hopes aroused by those debates. The 1946 Constitution reflected some (but not marked) changes. All the overseas territories, as they were now called, were given representation in the French representative assemblies, as well as at the inter-territorial and territorial levels.² The representatives to the French National Assembly and to the territorial assembly were elected directly. There were separate rolls and separate representation in elections to the National Assembly (with the exception of the eight territories of A.O.F. and French Togoland), to territorial assemblies (with the exception of Senegal), and to provincial

1. cf. La Conference Africaine-Française, Brazaville, 30 Janvier - 8 Février 1944.

2. cf. Arts. 77 and 78 of the 1946 Constitution. cf. also P.F. Gonidec, op.cit. pp.143-7.

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assemblies in Madagascar. The separate rolls consisted of citizens of metropolitan and of local status, the former being in practice almost entirely European; the latter entirely African.² This arrangement was bitterly attacked by the members of the second constituent assembly elected by "native" electorates. For tactical as well as 'ideological' reasons overt criticism concentrated on 'second class' citizenship. This in turn added more fuel to the fire of growing nationalist aspirations. The very concept of the French Republic - one and indivisible - was attacked as a hypocrisy.³ Territorial assemblies could also choose members (senateurs) to the Council of the Republic and councillors to the Assembly of the French Union.

In the federations of the A.O.F. and A.E.F. there were established Grand Councils whose members were chosen by each territorial assembly. This inter-territorial council had powers and functions similar to those of the territorial assemblies.⁴ Neither the territorial assemblies (and the Malgache provincial assemblies) nor the inter-territorial assemblies had any general legislative power. The meetings of

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1. In Madagascar the provincial assemblies corresponded to the territorial assemblies elsewhere in tropical Africa.
 2. In the trust territories of the Camerouns and in Togoland, the inhabitants were not French citizens but French-administered persons. In the rest all were technically Frenchmen, and their territories were part of the French Republic.
 3. cf. e.g. Leopold S.Senghor 'L'Avenir de la France dans l'outremer', Politique Etrangère, No.4 (Oct.1954) pp.419-426.
 4. In Madagascar the representative assembly was similarly chosen by the provincial assemblies.

the territorial assemblies had to be attended by the commissaire du gouvernement (usually the secretary general of the territory) to explain the point of view of the administration, but he was not a member of the assembly which contained no representatives of the executive as such.¹ The assemblies were consulted on many matters including the draft of local regulations (arrêtés). Their functions centred on the discussion of financial matters, but like metropolitan councils (on which they were modelled) they were required to make provision for 'obligatory expenses'.² The Grand Council had similar functions over inter-territorial finances, but all general political power still emanated from Paris and was exercised by the governor-general (and at the territorial level by the governors).³

Despite the continued retention of political power in French

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1. This contrasting position as compared to the British Colonial system of the Legislative Council can be partly explained by the underlying centralisation in the French colonial policy. cf. generally Kenneth Robinson, 'Constitutional Reform in French Tropical Africa', Political Studies, Vol. Vi, No.1 (1958), pp.45-69. from which some of the quotations given hereafter are taken.
 2. cf. K. Robinson, op.cit. p.45.
 3. On the territorial assemblies, cf. P.F. Gonidec, 'Les assemblees locales des territoires d'outre mer', Revue juridique et politique de l'Union Francaise, 6 (1952), pp.317-55 and 6 (1953), pp. 443-91.

hands, the association of Africans with the government at the three levels, (local, inter-territorial and "national") brought several consequences. One important consequence was the emphasis given to local or territorial politics. This resulted from the dissatisfaction with the government-general or its "legislative" part, the Grand Council, which had neither power or prestige of the French Parliament nor the direct contact with the African masses at the local level. The territorial assemblies had the contact with the local people and the French Parliament was the source of ultimate decision. The political activities of Africans was thus concentrated in the territories and in Paris. Their participation in the life of the territorial assemblies afforded a training ground for most of the emerging political leaders. And in Paris some of the more prestigious leaders who were sent as delegates capitalised on their presence there and ^{their} connection with sympathetic French politicians. Their membership of the French assembly also gave them an opportunity for direct contribution to an 'open house' of representatives of all France, thus helping to create a climate of opinion receptive to future changes. Indeed those of the African leaders who were present at the constitutional conventions in framing the 1946 constitution, had, by their direct participation, secured some significant concessions for African political rights. One such concession, for example, was that the ^{voting} requirement for the African populations should be left to an electoral law

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and not entrenched in the constitution.

On the whole only minor changes were made during 1946-55, although there was further extension of the franchise to the African populations. In 1947 a new category of local citizens entitled to vote was added; anyone literate in French or Arabic could vote.² In 1951 three other categories were added, viz. (1) heads of households (chefs du ménage) who had paid tax or were exempted from it; (2) mothers of two children (vivants ou morts pour la France) and (3) civil or military pensioners. There was also an increase of the number of deputies returned by Africans from 31 to 37. 21 out of 37 of the deputies were elected on the common roll (in A.O.F. and Togoland) while in the remaining tropical African territories 5 were elected by electorates of metropolitan citizens and 11³ by those of local citizens.

Meanwhile the pressure for changes in French Colonial policy was mounting. In Tunisia, M. Mendes-France initiated a new policy aiming at Tunisian independence; and the 'policy

1. cf. Title VIII article 77. cf. also W.J. Foltz, op.cit. p.24.
2. Law 47 - 1606 of 27 Aug. 1947 (J.O. Lois et Décrets, 28 Aug. 1947, p. 8534).
3. Law 51-586 of 23 May 1951 (ibid, 24 May 1951, pp.5323-4 - quoted by K. Robinson, op.cit. p.46. K. Robinson also gives the figures of the electorate which had been 1,362,763 in 1946, which rose to 5,061,025 for the national assembly elections of 1951.

of strength' tried in Morocco which had culminated in the exile of the Moroccan King had proved to be futile. Then there was the humiliating defeat in Indo-china and the outbreak of the Algerian war of liberation. It was officially admitted by the Government that major constitutional changes¹ must be made in overseas France. But in tropical Africa reforms came at first only in Togoland, where the powers of the assembly were increased and a council of government (conseil de gouvernement) was established, consisting of an equal number of members elected by the assembly and others appointed by the governor. Each member of the council of government was to be assigned a particular branch of the administration by the governor, but he had only a droit d'information et d'enquête and was not charged with executive responsibility. The assembly was empowered to decide the detailed application of laws and decrees, on certain matters.²

Although this change was limited to Togoland it had an indirect effect in galvanising political activities at the territorial and metropolitan level. One of the effects could be seen in the gradual weakening of the position of the

1. cf. speech by the Minister of Overseas France, 9 Apr. 1954 (J.O. Débats parlementaires, Assemblée Nationale, 10 Apr. 1955, pp.2-24-8).

2. cf. Law 55-426 of 16 Apr. 1955 (J.O. Lois et Décrets, 17 Apr. 1955, p. 3832.)

government-general, which was reflected in the financial sphere. Nevertheless the government-general remained the focal point for co-ordination of central policies, and acted as the primary redistributive agency for major expenditure, particularly in the case of development aid offered by France through the Fonds d'Investissement pour le Développement Economique et social (FIDES). The Grand Council was given the right to decide the distributions of FIDES aid among the territories, subject to advice given to it from the Ministry for Overseas France and the territorial assemblies.

At the Executive level the governor-general retained most of his powers, and was advised by his Conseil de Gouvernement as well as by the Grand Council. The administrative principle on which his office was established was to direct, co-ordinate and supervise a bureaucratic structure stretching across a vast territory, and in this it had served its purpose. Now, however, its political basis was being questioned from all quarters.

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1. Statistical studies made for the period 1946-53 show that there was a growing trend for territorial expenditure at the expense of the federal. cf. W.J. Foltz, op.cit. pp. 25-30.
 2. The redistributive principle which was the *raison d'être* of the federal structure, i.e. spreading the wealth of the coastal regions to the less favoured interior regions was questioned by those who contributed most, especially the Ivory Coast. This proved to be the axis of division later between Houphouët-Boigny and Senghor on the subject of African unity.

Curiously enough the territorial assertion for autonomy vis-a-vis the federal government-general, did not meet with as much opposition from Paris as we might have expected given the centralist policy on which the whole system was built.

Gonidec remarks that what he called the "conjoncture politique"¹ dictated the adoption of the anti-federalist line.

When the elections to the French National Assembly in January 1956 brought in its wake a chain of demands for transfer of power, the stage was set for the next major constitutional reform, and that came in the form of the Loi-Cadre.

The Loi-Cadre

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The Loi-cadre was passed in June 1956. It introduced changes of a social, economic, administrative and political nature. In the political field it introduced universal suffrage which had far-reaching consequences, as this enabled Africans to choose what kind of government they could have, when the time came. It also authorised the establishment in each territory of a council of government to administer territorial services. The territorial assemblies were granted power particularly over the organisation and management of administrative services of the territory and over the change of existing regulations (but not statute laws) in that respect.

1. Op.cit. p. 435. Expediency might be another word for it.

2. Law 56-619 of 23 June, 1956. (J.O. Lois et Décrets 24 June 1956, pp. 5782-4.)

The Law also introduced changes in the functions and powers of the governments-general (including the Grand Councils) of the A.O.F. and A.E.F., and in those of government and representative assembly in Madagascar. Finally it authorised the establishment of district and other local councils in rural areas.

The beginning of an African Executive

The loi-cadre made special provisions for Togoland and the Cameroons, in view of their different history and different legal status. In Togo the new arrangements culminated in the Statute of 1957 which established an internal government within the French union, with an assembly and a council of ministers. The Council of Ministers was changed to a "Togo-¹lese government" at the insistence of the Togolese Assembly. The proposal originated in Paris with amendments proposed by the Togolese Assembly which were duly accepted by the French government. Finally the whole question was approved by a referendum held on 28 October 1956.

Under this arrangement the Togolese government was presided by the French High Commissioner, and composed of a Prime Minister, nominated by the High Commissioner after consultation with the Assembly, together with not more than nine ministers appointed by the Prime Minister, after similar con-

1. cf. K. Robinson, op.cit. p. 49.

sultation. The Prime Minister and the other ministers were to vacate office if the Assembly passed a motion of censure by an absolute majority of all its members. Legislation relating to critical matters such as defence, foreign affairs, currency and foreign exchange, external trade and customs, was reserved to the metropolitan parliament. Then in March 1957 the Assembly requested and secured an amendment which strengthened the powers of the Prime Minister. The power of the High Commissioner to dissolve the Assembly was transferred to the Prime Minister.

The situation was different in the Cameroons, and the difference is deeply revealing^{of} the motivation behind colonial constitution-making. In effect, the French government chose to submit the question of the future of the Cameroons not to a popular referendum as it did in Togo, but to the Territorial Assembly after that body was elected. The election was boycotted by the radical nationalist party (the Union des populations du Cameroun) which stood for immediate and full independence and which questioned the good faith of the French government. The election returned an assembly in which a substantial majority of the seats were held by "moderates" who favoured a continuation of the trusteeship. This was given

1. cf. Decree 57-359 of 22 Mar. 1957. K. Robinson suggests with good reason, that these changes in Togo had been facilitated by the British decision to confer on the Gold Coast independence within the Commonwealth, and by the majority vote in favour of integration with Ghana in the referendum of British Togoland; op.cit. p.50.

effect by a Statute which provided, among other things, that the French High Commissioner remained, like any colonial governor, "dépositaire des pouvoirs de la République". The Assembly was granted legislative power in a limited field similar to that of Togo. The appointment of the Prime Minister and ministers and the formation of the "Cameroons government", under the Chairmanship of the High Commissioner was the same as in Togo. But the dismissal of the Prime Minister by a censure motion initiated by the Assembly could only take place if it was passed by a two-thirds majority, though a simple majority was enough when he himself put the question of confidence. The powers of the High Commissioners were specifically defined; they extended to defence, security and external relations. The relations between the Cameroons government and the French government were also specifically defined; in particular the High Commissioner was empowered to supervise the Cameroons institutions in order to provide the French government with the control required for the exercise of its responsibilities as an Administering Authority of a Trust Territory. All laws and regulations must be submitted to him before being put into effect, and he could, within ten days, require their reconsideration by the Assembly or the government. The Statute also provided for the creation of provinces and provincial assemblies.

1. Decree 57-501 of 16 Apr. 1957 (J.O. Lois et Décrets, 18 Apr. 1957, pp. 3153-64).

Unlike the new constitutions of the Trust Territories of Togo and the Cameroons which had been granted by separate decrees those of the Overseas Territories of A.O.F. and A.E.F. were dealt with collectively in a series of decrees and that of Madagascar in other series.¹ A further series of decrees covering all the Overseas Territories dealt with the definition of State services, reorganising the civil services. All these decrees were referred not to the Territorial Assemblies but to the French Parliament, and to the Assembly of the French Union as prescribed in the loi-cadre. This was severely criticised by Senghor who was deputy for Senegal in the French National Assembly. The attack was made on the grounds that consultation with the territorial assemblies was required under article 74 of the 1946 constitution. The failure to consult was defended on the grounds that article 74 applied only to decrees on the normal course, not to those expressly authorised by a Statute and submitted to Parliament itself.²

The underlying principle of the loi-cadre was to grant autonomy to each member of the Overseas Territories. The loi-cadre in the making had involved lengthy debates on the African representation, in particular their representation in the council of government. Among the final concessions made were one

1. K. Robinson, op.cit. pp.51-53.

2. Ibid.

stipulating
 /that the Africans in the council of government should be more
 1
 than the official members. The most important debates centred
 on the composition and function of the council of government,
 including their responsibility to the Territorial Assemblies.
 Attempts had been made during the earlier debates to argue
 that Overseas Territories (unlike the Trust Territories) formed
 part of the French Republic which was one and indivisible.
 It was proposed to establish a mixed Executive composed equally
 of nominees of the governor and members elected by the
 Assembly vested with certain specific rights in the Executive
 field, on the model of Togo. Later concessions were made pro-
 viding for a majority of elected members in the Council and
 after further debate and study all the members were to be
 elected representatives bearing the title of Minister, with
 a Vice-President. There the accomplished fact of a Togolese
 situation appears to have influenced this final outcome - the
 Africans from the Overseas Territories could not accept any-
 thing less than what^{was}/obtained in Togo.

On the responsibility of the council of government it was
 provided that it could resign "if it considered that it no
 longer enjoyed the assembly's confidence", and individual
 ministers were obliged to answer questions or requests for

1. This compares interestingly with the latter phase of the
 Executive Council in the British Colonial system.

explanations from members of the Assembly relating to the matters within their competence. Each minister would be charged with the responsibility for the management of one or more territorial service by delegation from the governor who would act in the advice (sur avis) of the vice-president of the Council. The governor had also to obtain the signature of the vice-president to give effect to the arrêté defining the Minister's function. A minister would be responsible to the Council of Government for administration, and was to be dismissible by the governor on the proposal of the vice-president. The Council would be presided by the governor, and, in his absence, by the vice-president. The vice-president would submit to the council an annual report on the government's activities and the territorial services which he would then submit to the Assembly. But the governor retained reserve powers in the legislative as well as in the Executive field. If he considered that any decision of the Council exceeded its power or was likely to prejudice national defence, public order, security, or civil liberty he could report it to the Minister, who, after consultation with the Conseil d'Etat, could annul the decision by cabinet within three months of the governor's report.

This transfer of more Executive power was accompanied by provisions for more autonomy and Africanisation of the civil service.

The Gaullist Constitution

The final stage in French colonial constitutional reform came in 1958, with the promulgation of General Charles de Gaulle's constitution of the Fifth Republic. This offered the Overseas Territories an option of complete independence outside the French Communauté or membership thereof. Only Guinea opted for independence outside the communauté thus becoming the first independent republic to effect a complete break from French rule. The rest chose the status of member states. This meant that while they were politically independent they were economically, culturally and militarily linked with France. The President of the French Republic was the head of the communauté, and he presided over a Council composed of all the chief executives of the new African states whose constitutions were substantially modelled on the Gaullist constitution. Under these constitutions the Executive, in all the new states, except in Madagascar, was monocephalous, and the parliament consisted of a unicameral body. In Madagascar the title of the chief executive was given as president from the start, whereas in the other states he was called a prime minister or president of the Council of Ministers. But there was no difference in function. It was a parliamentary regime with the Executive holding power on the strength of a parliamentary vote.

The functions and powers of the Executive under the new

constitutions were those of an independent government with the Executive power vesting in the new chief executive. His power was limited in certain matters (notably military) which were subject to conditions set by the communaute¹. As regards his relation to the head of the communaute Gonidec made an interesting comparison with the position in the commonwealth, noting the

"essential difference that in the case of the latter the English monarch is at the same time Queen of Great Britain and of each monarchy (Canada, etc). The governor-general who represents her plays the role of a parliamentary head of state, exercising all the traditional functions such as appointment of ministers, promulgating laws, granting pardon, etc. The president of France, on the other hand, is only the head of the communaute, and not the head of a state common to all the member states. He is in the same position as the English monarch in relation to the republics in the commonwealth (India, Pakistan) . . . " 2

A more apt parallel is the position of the new African executives particularly as provided for by the later constitutions in relation to the colonial executive. Indeed, as already explained one primary reason for a historical account of the colonial executive is to establish that the present position of the executive has evolved out of the colonial prototype. It is clear, for example, that the power of the colonial governors in both the former British and French territories was bound to

1. cf. P.F. Gonidec, op.cit. pp.407-8.

2. cf. P.F. Gonidec, ibid. at p. 183.

3. cf. Chapter 5 infra.

be autocratic by the very nature of the functions which it was established to discharge. The colonial executive was essentially an institution which was set up to secure the basic need of law and order and to co-ordinate all activities connected with that end as well as other activities which provided the necessary administrative infra-structure for the supply of essential services. The background of all the colonial administrative (and political) structure was the original aim of colonialism: the acquisition, maintenance and exploitation of the colonial territories. This explains, for example, the tardiness in the provision of social services for Africans such as education, and in the transfer of political power.¹

If the colonial executive held autocratic powers on behalf and in the interest of a metropolitan power, it was not unnatural for those African leaders who grew up under such a system to demand the same kind of power for what they considered to be the advancement of a different interest, the interest of their people. The experience under the colonial executive no less than some of the traditional heritage must account for much of the particular forms African executives have taken. The colonial executive was autocratic even in its last phase; the council merely carried out the decisions or proposals of

1. There is an ironic twist in the fact that the missionary factor in the colonial experience, (which provided the main educational service in the early period and up to 1939) contributed largely to the African political awakening by unwittingly preparing most of the leaders.

the governor. But his position and power in relation to the "colonised people may be more aptly compared with that of an absolute monarch. Comparisons with the position of the executive presidencies stop short after a certain point, principally because the presidents in the new African states owe their position to a different mandate, that of an African electorate.

The Various Forms of the Executive

No study of forms outside the context of substance (of policy and purpose) can make much sense. The particular form which a government takes must reflect the reality of power relationships. But this may not always be the case. Some governments have traditional forms and progressive aspirations. The reason, as stated before, is that those who wield the power of the state found that some use could be made of some traditional forms. But where the traditional form represents traditional political reality (as it did in Uganda) then there would be conflict between progressive aspirations and traditional interests, or simply between two power blocs. This question is discussed in Chapter Four. In this connection we may mention the view often advanced that a bicephalous executive is desirable because it makes for varied institutional forms and accommodates more shades of political opinions. It is associated with a parliamentary form of government which

is also generally believed to be desirable on the grounds that it involves discussions and criticisms. It is further claimed that such a system is a sign of political maturity, and that a mature political system is one in which one can feel safe in diversity, in which there is maximum participation of all the different sections of the population.

The major fallacy of such argument is that it proceeds on an assumption that there is no form of government outside the classical parliamentary form which can guarantee full participation and protection of rights. In fact any form of government which encourages and facilitates mechanisms for thrashing out problems should satisfy the functional test of good government. The parliamentary form can do this, but it can also be obstructive and divisive.

The case for the executive presidencies can be made on the grounds that they are better suited to the present needs of African countries at a crucial transitional period of their history, when unity and more effective and dynamic state action is required. No one can question the need for unity in a nation. And, while it is not inimical to unity and progress to wish to preserve cultural diversity, a united nation under a strong government will be better placed to guarantee the preservation and development of cultural heritages than a divided nation under an ineffectual government.

In Africa the majority of the states adopted a unitary

(monocephalous) executive presidency, many of them having moved from a classical parliamentary form of government with a dual (bicephalous) executive. This is a historical fact, and it is in this sense that in the spectrum of "progress" we have placed the States with a dual executive system midway between the monarchies (Chapter Three) and the executive presidencies (Chapter Five).

Historically there has been a tendency for parliaments to gain an ascendancy over absolute monarchs usually by a gradual process of whittling away of royal prerogatives.¹ Another tendency has been for republics to be established on the ruins of either absolute monarchies or moribund parliamentary regimes. France provides the best example of this. The French experience is instructive, since in France there has been every type of government under different forms since 1789. The attitude of people to the different forms has tended to be hinged on their political attitudes, particular forms being associated with certain political positions. It will, therefore, be helpful to outline these attitudes in relation to the executive form advocated.

There have been four attitudes to presidentialism in France. First there was the traditional extreme left wing view that the President in addition to the prime minister was an

1. e.g. the British parliament.

unnecessary duplication and a conservative device to restrain¹ the democratic process. Then there was the traditional extreme Right wing (Bonapartist) view that there should be a single chief executive. This curious unity of Left and Right wing attitudes is explained firstly by the fact that the Right wing view stems from the conviction of the need of strong and efficient executive machinery to implement the dictates of the ruler. As for the Left, there has been a strong statist leaning in socialist thinking, and as socialism replaced liberalism as the ideology of the Left, the idea gained ground that the Left, once in office, should be in a position to wield strong governmental power in order to carry out its policies.

Thirdly, the radical Left-centre generally preferred a dual executive in which an indirectly elected president would be head of state, but in a weaker position than a prime minister who would be the chief of government. The system under the Third and Fourth Republics represented this attitude. It was so defective, however, that some Left wing socialist constitutional lawyers like Professors Duverger and Vedel attacked it, advocating in its place a system under which a universally and directly² elected president would be the sole head of the executive.

Lastly there was the conservative right of centre which

1. cf. J.E.S. Hayward, Parliamentary Affairs, Winter 1964/65, p. 23.

2. Ibid.

traditionally wanted to preserve a dual executive in which the president was more powerful than the prime minister. The executive of the Fifth Republic of President de Gaulle is based on this idea with an important novelty, namely the fact that after 1962 the presidential mandate was based on universal suffrage. This last factor has given the system under the Fifth Republic a definite presidential orientation, in which there has been a shift of emphasis from parliamentary debates to presidential tours and periodic pronouncements as the focus of political activity. This, as we shall see in Chapter Five¹ has had a definite impact on African presidentialism.

This leaves us with the monarchies and the military executives. All that need be done here is to point out certain anomalies from the point of view of classification; the rest must be left to the appropriate chapters. If we conceive constitutional law in dynamic terms - in terms of change - from absolute monarchy through different forms of parliamentary government, to presidentialism - we come up against two remarkable facts: (a) the adaptation of some African monarchies, some of which (e.g. in Ethiopia) assumed a modern parliamentary guise, while in reality traditional authority holds sway; and

1. The impact of the Westminster (cabinet) model is seen in dual executive parliamentary systems which are discussed in Chapter Four. Sufficient account will be made of its salient features in an introductory section of that chapter.

(b) the reversal of African presidentialism through military coups, which takes us back to square one, as it were. From the point of view of classification the military regimes may be dismissed as unconstitutional, but they remain part of the reality. To the extent that they do not carry the stamp of legitimacy their "constitutional" structure does not merit any detailed study in an inquiry such as this. But, the advent of military rule, such as it is and the factors which give rise to it cannot be ignored even by constitutional purists. Nevertheless, these two types - monarchy and "military executives" - must be treated under different chapters, separately from the rest.

PART TWO

THE CONSTITUTIONAL STRUCTURE
OF THE EXECUTIVE

CHAPTER THREE

THE MONARCHIES

General Background

The monarchies which are the subject of this chapter are those of Ethiopia, Libya and Morocco.¹ The character of the executive in each monarchy has been determined by the peculiar history of each state. Islam is a factor common to Libya and Morocco; it is also a factor which has historically affected² the development of Ethiopian political institutions. The constitutional structure of the two monarchies in Libya and Morocco has been marked by the influence of Islam. Thus, in spite of their "constitutional" position their character is autocratic. Similarly in Ethiopia, the monarchy became autocratic and hierarchically organised principally as a response to continued threat of external forces chiefly under the impetus³ of Islamic states.

The Ethiopian monarchy bases its legitimacy on a claim of

1. The study set out with four before the coup d'état in Burundi abolished the monarchy, see Chapter Eight.
2. cf. Margery Perham, The Government of Ethiopia, 1948, Faber and Faber, pp. 35-6; 69-70.
3. It is realised that it is not possible to trace the origin of such traits in a political system to one cause only. The point here is that Islam has been the constant factor.

an uninterrupted line of descent from a union between King Solomon of Jerusalem and the Queen of Sheba. Some writers have argued that this has been a key factor in the maintenance and survival of the Ethiopian empire-state.¹ The revised Ethiopian Constitution of 1955, also makes specific reference to Solomonic descent as the source of legitimacy of the present dynasty.² But the relevance of the claim is not necessarily dependent on its historical validity, though everything possible is done to demonstrate this. The main point about the claim is the religious ideology implicit in it which is supposed to invest its successful claimants with some sanctity.³ The present revised constitution (1955) is based on the first constitution of 1931. They have both emanated from the top, being granted by the Emperor.

The monarchy in Libya is of recent origin, as a (national) Kingdom, although there have been emirates in Libya over a long period of time.⁴ The present monarchy - in the United Kingdom of Libya - came into existence on December 27th, 1951, when the

1. M. Perham, op.cit.; cf. also Donald Levine, "Legitimacy in Ethiopia", paper presented at the annual meeting of the American Political Science Association, Chicago, Illinois, September 9-12, 1964.

2. Art. 2.

3. cf. The Kibre' Nagast, (Glory of Kings), cf. also, art. 2 of the Revised Constitution.

4. cf. Oliver and Fage, op.cit., pp. 66-85.

Emir of Cyrenaica became King of Libya as Idris I. The Libyan State of modern times was formed on January 1st, 1934 by the union of Cyrenaica and Tripolitania under Italian rule. With the defeat of Italy in 1942-43, Cyrenaica and Tripolitania passed under separate British Military administration and Fezzan under French. On November 21st, 1949, the General Assembly of the United Nations decided that an independent and sovereign state of Libya should be constituted by January 1st, 1952: the inhabitants, in a National Assembly were to determine its form of government and constitution. The National Assembly of inhabitants, comprising representatives in equal numbers from Cyrenaica, Tripolitania and Fezzan met in Tripoli on December 2nd, 1950 and decided that Libya should be a constitutional monarchy under Mohammed Idris As-Sanussi whose emirate of Cyrenaica had been recognised by the British since 1946. The first constitution which gave expression to this decision came into force on October 7th, 1951¹. The pre-amble to this Constitution shows the Constituent Assembly declaring:

" . . . Having agreed and determined to form a union between us (i.e. the people of Cyrenaica, Tripolitania and Fezzan) under the Crown of King Mohammed Idris el Mahdi el Sanussi (As-Sanussi), to whom the nation has offered the crown and who was declared constitutional King of Libya by this, the national constituent Assembly . . . " ²

1. Some amendments were made on December 8th, 1962 and April 25th, 1963.

2. Preamble to the Libyan Constitution.

In Morocco, the present Alawite dynasty was established by Mawlay Rashid in 1660. When France established a protectorate in Morocco in 1912, the institution of the monarchy was preserved. It provided the centre of identification for Moroccan nationalist aspirations, and in the inter-war period and after the war, up to 1955, King Mohammed V provided the dominant national image. Although he was less absolute than might be expected, owing to the emergence of political parties in Morocco since the 1930's, he became the centre of political life and controversy - so much so that the French exiled him, in 1953. Upon his return from exile on November 18th, 1955, he re-affirmed his pledge to "establish democratic institutions which will spring out of free elections . . . within the framework of a constitutional monarchy."¹ Once in power again, the monarch was reluctant to fulfil the pledge too soon, chiefly because power would pass from his hand to a dominant political party - the Istiqlal - despite the fact that this party supported the monarchy.²

After the death of King Mohammed V (on February 28th, 1961) his son, the new King Hassan II, set out to introduce changes which purported to give his rule a broader basis of

1. cf. Ziadeh Nicola A, "Wither North Africa?" Aligarh Muslim University, Institute of Islamic Studies, Aligarh, India, 1957, p.72, quoted in Willard A. Beling 'Some Implications of the New Constitutional Monarchy in Morocco', The Middle East Journal, p. 163. Vol. 18/64.

2. cf. Beling, op.cit.

power. On December 7th, 1962 Morocco went to the polls to vote in its first written constitution in a Gaullist style of referendum. The question put to the people was a simple acceptance or rejection of the constitution (as in France) presented to them from above by King Hassan II. The results show~~a~~ a landslide in favour of the constitution. This has been explained (1) in terms of Istiqlal's position (a Yes vote) and its rural organisation of religious conservative forces; and (2) because King Hassan was able to choose the terrain, and had the monopoly of radio and T.V. and had the initiative of timing over the Left wing opposition party. When he announced the constitutional referendum the opposition was caught by surprise before they had time to develop a₁ practicable campaign strategy.

It will be seen from the foregoing that the constitution of each state has been given in three different ways: the Ethiopian constitution was "granted" by the Emperor and promulgated after it was passed by the legislative body; the Libyan constitution was enacted by a constituent assembly representing the people; the Moroccan constitution was pre-

1. Beling, op.cit. The opposition was the U.N.F.P. (union nationale des forces populaires) led by the late Mehdi Ben Barka. The opposition put up a fight by claiming that the Palace had chosen the referendum because it could not trust an elected constituent assembly made up of Moroccans to draft a constitution; and they questioned the right of the king to arrogate this power to impose a condition from the top. Ibid.

pared by the King and voted at a referendum. This diversity in the method of working out of the constitutions may give an idea on the nature of power-relations between the king and other political forces in the country concerned. But it is not in itself a sufficient guide as to whether ~~or not~~ the monarchy is "constitutional" or not. Nor is the system necessarily "constitutional" because it is declared to be so by the constitution. In Libya the words of the preamble quoted above and in Morocco under article one of the constitution the kings are declared to be constitutional monarchs. And while it is true that this may tend to impose a certain amount of restraint it does not render the monarch one who reigns rather than one who rules. Nonetheless, by virtue of the fact that the Libyan and Moroccan monarchies are said to be "constitutional" under their respective constitutions it would be inaccurate to classify them, along with their Ethiopian counterpart, as absolute monarchies. Perhaps a better classification would be to call them quasi-constitutional. It should be remembered that although classifications are helpful as tools of analysis, in a comparative study of this kind, they could get out of hand and mislead. Accordingly, while bearing the two different categories in mind I propose to examine the three monarchies together through some of their characteristic features, and then draw some conclusions.

1. Source of Sovereign Power

In Ethiopia sovereignty is vested in the Emperor, who exercises supreme authority over all the affairs of his empire.¹ His person is declared to be sacred, his dignity inviolable and his powers indisputable - all by virtue of "His Imperial blood as well as by the anointing which He has received".²

In Libya sovereignty "belongs to God alone, and is given by His will as a sacred trust to the State" which is to be the source of power.³ Saving this provision sovereignty is vested in the King.⁴

In Morocco sovereignty is declared to belong to the Nation which is to exercise it directly by referendum and indirectly through the institutions established by the constitution.⁵

2. Succession to the Throne

A common feature of all three of the monarchies under review, in regard to succession to the throne is the hereditary principle, together with the doctrine of primogeniture,⁶ only male succeeding male.

1. Cons. art. 26.

2. Cons. art. 4.

3. Cons. art. 40.

4. Cons. art. 44.

5. Cons. art. 2.

6. Cons. Ethiopia art. 5; Libya art. 44; Morocco art. 20.

But differences appear especially concerning provisions about situations where there is no legitimate heir to the Throne. The Ethiopian Constitution having provided that succession shall remain perpetually attached to the line of the present Emperor leaves it to a future special law to determine the order of and qualifications for the succession. No such law has been given in the eleven years that have followed the promulgation of the Revised Constitution in November 4th, 1955. Furthermore, in the absence of a male descendant or one such not capable of meeting the requirements of succession to the Throne the Emperor, after consulting the Crown Council, can designate as Heir Presumptive from among his nearest male relatives, in the line of succession, ¹ meeting the necessary requirements. And the Emperor determines as to the qualifications for succession to the Throne, after consultation with the Crown Council. ²

The Crown Prince, eldest son of the Emperor and successor to the Throne, has lived as such in the shadow of his father for thirty-seven years. The provisions which leave to a "special law" of the future and to the Emperor to decide on the qualifications for succession had given rise to a wave of speculations on the successor of the present Emperor. These speculations came to an abrupt end with the death, in 1957, of the Duke of Harar, the second (and favoured) son of the

1. Art. 13 (a).

2. Cons. art. 13 (b).

Emperor. The question of succession appears to be settled now, making the constitutional position of the Crown Prince more secure.

The Libyan Constitution requires that if the Throne remains vacant after the King's death, owing to the lack of a successor, the two Chambers of Parliament must hold a joint meeting to appoint a successor within ten days. There must be at least three-quarters of the members of the two Chambers, voting openly by a majority of not less than two-thirds of the members present. If the choice cannot take place within the time specified, the two chambers must jointly proceed to make the choice on the eleventh day, in the presence of an absolute majority of the members of each of the two chambers and by a proportionate majority. If the House of Representatives has been dissolved the old House must meet until the King is¹ chosen.

During the period when the Throne is vacant, the Council of Ministers ^{is} ~~are~~ empowered to exercise the constitutional² functions of the King in the name of the Libyan people. If the King is a minor or if any circumstance prevents or delays

1. Art. 45. Art. 45 also makes reference to royal decrees of 22 Safar 1374 and 25 Rabie el Tuni 1376. H., each of which shall ~~regulate~~, have the same force as an article of the constitution in regulating succession to the Throne.

2. Art. 52.

him from the performance of his functions, the council of Ministers must, with the consent of Parliament, appoint a¹ Regent or a Council of Regency to take his place.

The ageing King Idris, being childless, was to be succeeded by his brother, Mohammed ar-Rida who died in 1954, leaving his son Hassan ar-Rida as Sanussi, next in line as Crown Prince of Libya. Hassan has married a daughter of the governor of Tripolitania, thus strengthening royal ties with the most populous section of the country. ~~As~~ A close observer has written:

"unlike Hassan II of Morocco or Crown Prince Wossen of Ethiopia, he is only the second in a dynasty that is new and unassayed, despite its traditional character."²

Be that as it may, the Crown Prince of Libya enjoys the confidence of his uncle, the King, as may be borne out by his appearance at a crucial event (i.e. the first "summit" meeting of the O.A.U.) representing Libya in Addis Ababa, in³ May 1963.

In Morocco there are no detailed provisions, covering

1. Art. 50.

2. William Zartman, 'Politics in North Africa', (1964), p.90.

3. There are thirty-eight princes in Libya, of whom six are from the King's family branch. In 1954, all princes except those in direct succession were divested of their titles and their right to hold government office, following the assassination of a trusted adviser and controller of the Royal Household by a member of a rival branch of the Royal family. cf. Zartmin, *ibid*.

situations where the Throne is vacant. At the time when the constitution was given in 1962 the present King Hassan had only just acceded to the Throne when he was in his early thirties. This may explain the absence of a preoccupation with succession problems. But curiously enough there is a provision on Regency. While the King is a minor, a Regency Council is empowered to exercise the constitutional powers and rights of the Crown during his minority. The Regency Council would be presided by the King's nearest male relative in the collateral male line who is over twenty-one years of age. The other members shall be the President of the Supreme Court, the Dean of Rectors of the University, and the President of the Chamber of Counsellors.

3. Nature and Scope of Function

(a) Head of State

Functions commonly entrusted to Heads of States in other systems are performed, needless to say, by the three African monarchs. Such functions are, for example, the accrediting and receiving of diplomatic representatives, conferring honours and titles, remitting penalties, promulgating laws, opening and closing parliamentary sessions, and so forth. Each has

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1. Art. 21. The age of minority is set as below 18 years in all three constitutions, and comparable provisions exist on regency in Ethiopia and Libya

the duty, as Head of State, to defend the unity and integrity of his Nation and to ensure the protection and welfare of his subjects.

(b) Chief Executive

The constitutions of all ~~three~~ countries under examination entrust executive power to the monarchs whose traditional position is thus reaffirmed in a modern guise, albeit with modification and with varying degrees of limitation and entrenchment.¹

Power of Appointment. To start with the least limited monarchy - Ethiopia - we find that the power of appointment of the emperor is unlimited. He can appoint and dismiss the Prime Minister and other Ministers and Vice Ministers on his own initiative. He also appoints on his own initiative the members of the Senate as well as their President and two vice presidents, governors, judges, mayors, diplomatic representatives, officers of the military and the police, managers and board directors of state undertakings. This power of appointment which has been used skillfully to advantage over the years, carries with it the power to determine and control the progress within and termination of office of government officials including junior civil servants.² The emperor

1. cf. Cons. Ethiopia, arts. 26, 27; Libya, arts. 42, 44; Morocco, arts. 24, 25 and 29.

2. The division between the civil service and "political" service is theoretical.

determines the organisation, powers and duties of all Ministries and Executive departments, and administers the whole Government.¹ Under this power he can also establish new departments and make financial provisions for such departments, which has often been done by Imperial Decrees under the "emergency legislation" provision of article 92 of the Constitution. Last but not least, he approves the election and appointment of the Archbishop and Bishops of the Ethiopian Orthodox Church.²

Curiously enough, Morocco and not Libya comes next in a descending order of limitation of appointive power in respect of Ministers. For, in Morocco, the King appoints the Prime Minister and other Ministers on his own initiative and can terminate their office or accept their resignation.³ Furthermore the King presides over the Council of Ministers. Judges are appointed by royal decrees upon the proposal of the High Council of the Judiciary over which the King presides,⁴ and civil and military appointments are made by him⁵ though he may delegate His power.⁵ On the other hand, the members of the Senate (Chamber of Counsellors) are elected.⁶

1. Cons. art. 27.

2. Cons. art. 127; cf. also art. 126.

3. cf. Cons. arts. 24 and 25 respectively.

4. Cons. art. 84.

5. Art. 30.

6. Art. 45.

In Libya, by contrast the King appoints and removes the Prime Minister, but the appointment or dismissal of other Ministers is made by him at the proposal of the Prime Minister.¹ Again diplomatic representatives are appointed by him at the proposal of the Minister of Foreign Affairs.² He has the right to establish the public services and to appoint and dismiss senior officials but "in accordance with the provisions of the law".³ He appoints the members of the Senate and their president but not the two vice presidents who are elected though subject to his approval.⁴ Judges are appointed by royal decree.⁵

(c) Legislative Power

The power to legislate is one of the crucial tests by which the nature and scope of political power may be assessed. The point at which constitutionalism ends and absolutism begins may not be easy to find, but where plenary power is enjoyed by a Head of State this is hardly a problem, whether the Head of State is an Imperial autocrat or a military dictator.

In African monarchies some constitutional limit appears to have been placed on the traditional legislative power but the primacy of the executive can still be asserted by various

1. Cons. art. 72.

2. Art. 73.

3. Art. 74.

4. Arts. 94 and 97.

5. Art. 141.

devices. Firstly there is the right to initiate legislation and introduce resolutions in Parliaments and the right to address Parliament in person, or through messages. Then there is the power to veto legislation passed by Parliament; and here the difference in the provisions of the various three constitutions is striking. In Ethiopia the Emperor can send back the bill with his observations or with an alternative proposal.¹ No provision is made to deal with the event where Parliament persists in its original position. In Libya bills are approved by the King, who also makes the necessary regulations for carrying out the laws without modifying or suspending them or dispensing with their execution.² He may refer the bill back to Parliament for reconsideration. If the proposal is passed again by a two-thirds majority of the members composing each of the two chambers he shall assent to it and promulgate it as law. Even if the two-thirds majority is not secured, if Parliament in another session can pass the bill again by a simple majority of all the members composing each of the two chambers the King must give his assent and promulgate it.³

An interesting innovation is found in this respect in the Moroccan constitution which introduces a "presidential" practice

1. Cons. arts. 88 and 91.

2. Art. 62.

3. Art. 136.

of referendum. The King may either give his assent to a bill or send it back to Parliament for a second reading in a message countersigned by the Prime Minister.¹ Or he may submit it to a referendum, the result of which will be binding on all. And if a government bill that had been rejected by Parliament is approved by a referendum the chamber of representatives is dissolved and a new one elected, in its place.² This shows the hand of the Moroccan King much stronger in this field than the Libyan King. It will be seen in later chapters that the practice of resorting to referendum gives the executive great advantage to manipulate in case of a deadlock. But the dissolution of Parliament as a consequence of an approval of a referendum, is a feature peculiar to the Moroccan Constitution, and has no equivalent place in African Presidential regimes.

Another feature of legislative power is the right to legislate in emergency situations, in two types of situations. First in case of national emergency when the constitutional basis of the state is threatened in which event the Head of State takes full powers. But this is not peculiar to these systems.³ Secondly, there is the right to legislate by decree when Parliament is not in session. The frequency of resort to this type of legislation by decree may give a clue to the real

1. Arts. 26, 70, 71, 72.

2. Arts. 74, 75.

3. This will be discussed in detail in Chapter Five.

powers of the Head of State. In Ethiopia this right has been exercised all too frequently covering mostly financial matters and in situations which can be defined as "emergency" only by a great stretch of the imagination.¹ A similar provision exists in the Libyan constitution,² and in both cases the decree must be submitted to Parliament at its first meeting following the recess. In Morocco, Parliament must authorise the government for a specified period and purpose, to take by decree after deliberation in the Council of Ministers, measures which normally fall within the domain of law, subject to ratification by Parliament at the end of the time limit. The variation which is noteworthy here is that it is the Council of Ministers and not the King in person ~~which~~ is empowered to legislate by decree. The explanation may be that the King presides over the council.

Again there is the right in connection with international agreements and declaration of war, which is subject to express provision in all three constitutions. But some variations must be noted. In Ethiopia the emperor who exercises supreme direction over foreign relations, has the right to settle disputes with foreign powers. He alone has the right to ratify treaties and to determine which treaties and other

1. cf. Bereket, Habte Selassie, 'Constitutional Development in Ethiopia' (1966) JAL. Op. cit., p. 28. [Vol. 10, No 2, p. 86.]

2. Art. 64.

international, agreements shall be subject to ratification¹ before becoming binding upon the Nation.

But Parliament must approve all agreements which involve the modification of Ethiopian territory or sovereignty or jurisdiction over such territory; or which lay a burden on Ethiopian subjects, modify existing legislation, require ex-²penditures of state funds or involve loans or monopolies. Declaration of war can be made only on the advice and consent of Parliament.

In Libya the King has the right to declare war and conclude peace and ratify treaties after the approval of³ Parliament. In Morocco, the King signs and ratifies treaties. However, treaties which imply commitment for the finances of the state may not be ratified without prior approval by Parliament.

This paradoxically enough appears to place less limit on the power of the King of Morocco than the equivalent provision in the Ethiopian constitution. On the other hand there is no provision enabling the King of Morocco to declare war or to conclude peace, which is no less paradoxical.⁴

1. Art. 30.

2. Art. 30 proviso.

3. Art. 69.

4. cf. art. 35 which gives him power to declare martial law.

(d) Judicial Power

Among the African monarchs, only the Emperor of Ethiopia exercises judicial power. His traditional court (Yezufan Chillot) continues to function, despite the fact that the constitution vests judicial power in the Supreme Imperial Court and "such other Courts as may be established by law". The law in question established the High Court and other Courts of inferior jurisdiction, without making mention of the jurisdiction of the Imperial Chillot. Unwritten tradition has therefore been allowed to prevail over the express provision of the constitution, though the matter has never¹ been disputed¹ in court.

4. Responsibility of the Monarchs

The doctrine of British Constitutional law that the Queen can do no wrong finds a rough equivalent in at least one African monarchy. Article 62 (a) of the Ethiopian Constitution provides:- " In accordance with tradition and the provisions of Article 4 of this constitution, no one² shall have the right to bring suit against the Emperor".

1. cf. a controversy on this: (1) R.A. Sedler "The Chillot jurisdiction of the Emperor of Ethiopia, a legal analysis in Historical and Comparative Perspective" (1964) J.A.L. 59 and (2) Bereket¹ Habte Selassie, op.cit., pp. 87-8.

2. Art. 4 provides that² emperor's person is sacred by virtue of his imperial blood and the annointment which he has received.

This immunity from legal suit which is provided in general terms may be given the widest possible scope covering criminal and civil liability, particularly in view of the reference to tradition. Personal immunity from legal suit is not specifically made the subject of constitutional provision in Libya, and Morocco, although in both countries, as in Ethiopia, the¹ constitutions provide that the Monarch shall be inviolable. The position of the Libyan Monarch approximates to that of his Ethiopian counterpart in this respect as it is provided that he shall be exempt from all responsibility.² In another respect the position of the King of Morocco resembles that of the Emperor of Ethiopia,³ in that both their persons are declared to be sacred.

The personal immunity under article 62(a) of the Ethiopian constitution does not extend to the properties held in the name of the Emperor which are declared to be under the same regime as is applicable to all properties of Ethiopian⁴ nationals. No mention is made in this respect in the constitutions of the other monarchies.

In these systems it is not always possible to disentangle the personal responsibility (or its absence) from the political responsibility. Thus in Ethiopia the person of the

1. Cons. Libya art. 59; Morocco art. 22.

2. Art. 59.

3. Cons. Ethiopia art 4; Morocco art. 22.

4. cf. art. 19(d).

Emperor is held to be sacred. His dignity inviolable and his power indisputable, all in one breath; and this provision, apart from tradition, is the basis of the immunity from legal suit, noted above. In such a system where the Ministers are responsible to the Emperor as we shall see below, the implications of this doctrine are immense - no one can criticise the government, as this would be disputing indisputable power.

Political responsibility in Libya is more distributed. There, the King exercises his power through his Ministers and responsibility rests with them.¹ In Morocco, on the other hand, there is no such distribution of responsibility. The Moroccan King plays a wide role presiding over the Council of Ministers, the High Council of National Promotion and the Plan,² and other bodies, which means less distribution of power and therefore of responsibility. This may explain the absence of an express provision exempting him from all responsibility.

Political responsibility does not rest on constitutional principles alone, even where these may be enshrined in the articles of the constitution. It involves a variety of other factors, including the political experience of the nation concerned and of its active social elements, and the inherited

1. Art. 60.

2. Arts. 32 and 97.

social position of the central force (i.e. the monarch) which predates the formal relationships fixed in the Constitution, and breaks forth in the dynamics of power.

II - The Ministers

We have already seen how the Ministers in the three monarchies are appointed; but we saw this in connection with the powers of the monarchs. We must now shift our focus to the Ministers.

a. Ethiopia

In Ethiopia, there is a Council of Ministers, first set up in 1943 under order no. 1, which was later incorporated by the Revised Constitution of 1955. The Council of Ministers has an advisory function, and is responsible to the Emperor for all advice and recommendation. It is composed of all the Ministers and is presided over by the Prime Minister who submits to the Emperor, for approval, all matters discussed at the Council, including any change in the rules of procedure.

The Prime Minister acts as a go-between, presenting to Parliament draft legislation made by the Council and approved by the Emperor; and presenting to the Emperor proposals of legislation passed by Parliament.¹ According to the Constitution each Minister is also individually responsible to the Emperor for the discharge of the duties in his respective

1. Cons. arts. 71 and 72.

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 Ministry, a provision, no doubt designed to ensure the Emperor's complete control over the machinery of government. The Ministers have the right of access to Parliament and may be individually summoned by the latter to answer questions. Ministers may not for remuneration, compensation or benefit engage in activities in which there is no governmental participation.² In case of offences committed by them, including the Prime Minister, in connection with their official functions they may be tried before the Supreme Imperial Court, upon the initiative of a majority vote of both Houses of Parliament or by order of the Emperor. A special prosecutor must be appointed by the Emperor for either event. This clearly does not amount to an impeachment right as far as the initiative of Parliament is concerned, since its enforcement depends upon imperial consent to appoint the special prosecutor, which may be postponed indefinitely.

Early in 1961, soon after the abortive coup d'etat of December 1960 a committee for constitutional amendment was set up, and in November 1961 it recommended that the constitution be amended to provide for the appointment, by the Emperor, of the Prime Minister, and for the selection by the Prime Minister of his own cabinet of Ministers who would then be presented to the Emperor for formal installation. The

1. Art. 68.

2. Art. 74.

same report also suggested a separation of the position and function of the Head of State from that of the Head of Government, with a corresponding transfer of executive authority to the Prime Minister and his cabinet. A minority opinion was in favour of making the Prime Minister responsible to Parliament. The report was shelved for five years. Then on March 22, 1966, the Emperor announced that he would appoint a Prime Minister who would select Ministers and present them for appointment by the Emperor. The following day a law (Order No. 44 of 1966) appeared on the Negarit Gazette. The only real change¹ this law introduced is that it gives the Prime Minister a right to propose the other Ministers for appointment by the Emperor. The structure and function of the Council of Ministers remains the same, and no change was made in respect of responsibility - collective or individual. While the Prime Minister is appointed and dismissed by the Emperor, the question of the dismissal of Ministers is omitted by the new law. In the absence of an amendment of the constitution they must be presumed to be dismissable by the Emperor. Similarly it may be presumed that the Emperor can invoke the concept of individual responsibility of each Minister to him in order to retain the services of Ministers in case of a resignation of the Prime Minister.

The office of the Prime Minister has gained better status

1. Art. 4.

in recent years with the gradual eclipse of the ancient office of the Tsahafe Tezaz (Privy Seal). The present Prime Minister combines his office with that of the Tsahafe Tezaz; and since his re-¹appointment under the new law he has also taken over the Ministry of Interior. But, as Ethiopian history amply demonstrates, such consolidation of personal power is not necessarily accompanied by a corresponding growth of the institutions in question. One factor which has inhibited the growth of the cabinet as an independent institution is the policy of concentration of power itself and the dual responsibility of Ministers. A strong Prime Minister seeking to institutionalise the cabinet by creating a defacto single Ministerial loyalty to him, could not last long. The conclusion is inescapable: the cabinet will remain essentially what it has been - an advisory body which can be used as an imperial lightning-rod in the event of a stormbreak.

b. Libya.

In Libya there is a council of Ministers consisting of the Prime Minister (who presides) and the other Ministers. The Council of Ministers is responsible for the direction of all internal and external affairs of the state,² and they are collectively responsible to the House of Representatives for

1. cf. Bereket, Habte Selassie, on the fall of the former Tsahafe Tezaz. op.cit., pp.82-3.

2. Cons. art. 84.

the general policy of the state. Each Minister is also¹ individually responsible for the activities of his Ministry. Any signature of the King concerning the affairs of the state must have the countersignature of the Prime Minister and of the competent Minister.

The House of Representatives may by a majority of all its members pass a vote of no confidence in the council of Ministers. If this happens, the council of Ministers must resign. A vote of no confidence may concern one of the Ministers, in which case he alone resigns. The motion of censure must be presented by no less than fifteen deputies.² Ministers have a right to attend Parliament, but can vote only if they are³ members of Parliament. They may also be required to attend. In the event of the dismissal or resignation of the Prime Minister the Ministers are considered thereby to have been⁴ dismissed or to have resigned.

The constitutional position of the Prime Minister and his cabinet in Libya vis-a-vis the King is stronger than in Ethiopia. But palace politics still holds sway in the government, which has been caught in a political tug of war between two forces - the King and Parliament. A dismissal of the Prime Minister by the King on the one hand, and a vote of no

1. Art. 86.

2. Art. 87.

3. Art. 88.

4. Art. 89.

confidence by the House of Representatives on the other has the same result - resignation of the cabinet. The dilemma of the cabinet has been highlighted by the issue of legislation by royal decree which has caused the resignation of the cabinet at least three times. Then in 1960 occurred the first vote of no confidence, bringing down the government of Abdulmajid Kubar, over a road construction scandal. Ironically enough, Kubar had been President of the House of Representatives since Independence up to the time of his appointment as Prime Minister in May 1957. Nor did his successor fare any better. He resigned in March 1963, two and a half years after he took office. His government, like all the previous governments, was reshuffled at least once a year. This created ministerial instability with the consequential disruption of government business. Owing to this state of affairs, the King and Parliament have begun to show lately signs of restraint and of growing more sensible to each others roles, which has¹ meant a more stable cabinet.

c. Morocco.

In Morocco the constitutional position of the cabinet represents an interesting combination of the presidential and parliamentary system of government, in which the King plays an active role. There is a government consisting of the Prime

1. Zartman, op.cit.

Minister and the other Ministers who are all members of the Council of Ministers. But the Council of Ministers is pre-¹sided over by the King, and the government is responsible to² the King and to the Chamber of Representatives.

The Chamber of Representatives may question the responsibility of the government by a motion of censure, which may be initiated by at least one tenth of the members of the Chamber. The adoption of such a motion of censure by an absolute majority of the members of the Chamber^x must result in the collective resignation of the government; but no other motion of censure may be adopted for a year after such^{am} an event.³ The Prime Minister, after deliberation with the Council of Ministers, may pledge the responsibility of the government to the Chamber of Representatives with regard to a declaration of general policy or to a vote on the text of particular bills. In this pledging the responsibility of the government he may seek a vote of confidence which, if rejected by an absolute majority of the members of the chamber, must⁴ result in the resignation of the government.

The peculiar position of the cabinet especially in relation to the King is an ingenious piece of constitutional innovation and the history behind it is equally remarkable.

1. Cons. arts. 64, 25.

2. Art. 65.

3. Art. 81.

4. Art. 80.

Indeed it cannot be properly understood without a brief review of the development of the position of the monarchy, over the last decade. This period is marked by a reassertion of the King's personal role in government, against a background of a complex political life. Until 1956, the King maintained an arbitral - almost apolitical - position. Leaders of various national organisations such as parties, trades unions and resistance groups exercised crucial influence over the King in all important governmental appointments. The cabinet itself was selected from a list of political figures and technocrats submitted by a Premier-elect, after long consultations with various groups. There was national consensus over public goals in post-independence Morocco, up to 1956. And this fact plus the King's policy of non-interference in matters of detail avoided friction in particular between him and his cabinet. Any threats of major clash were immediately nipped in the bud by abandonment of the issue or measure which constituted the threat. The result was a policy of compromise with moderate programmes; carried out partially by a government which suffered from ministerial instability.

After October 1956, the government which reflected this national consensus - (The Government of National Unity) was reorganised with Istiqlal - the dominant political party - holding a majority of the Ministries. Then, demands were made for full powers of the government, but were compounded by

partisan bitterness and resulted in the resignation of the Ministers. The party causing the major crisis - the Istiqlal - next formed a government in May 1958, but incipient rivalries reduced its effectiveness and shortened its life, when in December, 1958, soon after its fall, new Ministers were chosen in a personal capacity. But the political stagnation continued until 1960 when pressures coming from different directions converged to change the situation. The Crown Prince was young and impatient; the political parties were frustrated by the stalemate and impatient to use state power for programmes along partisan lines. An attempt made to form a government with the Crown Prince as Prime Minister, was resisted by the parties. The King overcame this resistance by assuming leadership of the government, with the Crown Prince as deputy Prime Minister. His failing health and the drive for leadership manifested by the Crown Prince combined to transfer actual executive power from the King to the Prince. The Ministers were again appointed not on a party basis but on a personal capacity.

On February 26th 1961, the King (Mohammed V) died and the Crown Prince (Hassan II) ascended the throne. The young King's ideas on government and leadership may help partly to explain the origin and nature of the present position of the cabinet. The cabinet, according to him, is to be "a team of responsible men grouped together about a chief, capable of giving the

powerful impetus necessary to lead the people in their fight¹ for progress and against poverty."

This view of personalised power in government is crystallised in the constitution, as we have seen. The King's presidency of the cabinet and his right to appeal to the people through the mechanism of referendum gives his rule a modern guise as well as an effective control over government, as was shown in the referendum of December 7th, 1962. It also gives him an advantage on which government successes rebound to his credit whereas failures can be used to weaken parties that may happen to predominate in his cabinet. As for the future, the King has said: " I cannot, at the present time² make the exercise of power less direct..."

His creation in May 17th, 1963 of a Palace Party - the Front de Défense des institutions constitutionnelles (FDIC), the Hasanid~~te~~ equivalent of the Gaullist UNR - was an attempt to consolidate this personal power. His present cabinet is drawn mainly from this party. The result of the constitutional referendum had not only provided him with a state apparatus as he wished it, but had also given him a sense of self-assurance. In order to offset the influence of the Istiqlal party, which, while still loyal to the institution of the

1. Zartman, op.cit., pp. 22-5.

2. Ibid.

monarchy, was becoming^a/bittercritic of the government (which was his) he created the FDIC. This party was essentially a coalition of the Popular Movement Party and the Liberal Independents - "the King's men". King Hassan worsted the opposition of^{the}/Right but, as the tragedy of the Ben Barka affair~~s~~ demonstrates, he did not shatter the opposition of the Left.

CONCLUSION

The history of monarchies in Europe has been characterised by a shift of power from the person of the King to institutions such as Parliament and a cabinet of ministers. This, of course, is the result of a long period of evolution. It is open to question whether this is possible in countries with the history and present reality^{such}/as those of our three states. On the other hand it is doubtful whether personified traditional power can continue to resist the onslaught of change without dire consequences. It must be recognised, however, that the monarchies have so far demonstrated an innovating capacity which seems to have helped their survival, ~~as far~~. The institutions of parliament and cabinet have been introduced in all three, with varying degrees of transfer of power to these institutions. But in no case is the supremacy of the monarch over the cabinet seriously questioned. Even in the two quasi-constitutional monarchies of Libya and Morocco the balance of power is decisively on the side of the monarch.

Traditional authority with which monarchs are invested does not simply slough off, even in the presence of a modern constitution. All the constitutional devices which require the acts of the King to conform to certain requirements may appear to be restrictive of the King's power and indicative of ministerial or parliamentary supremacy. But it is fair to generalise, that while they tend to reduce arbitrariness by subjecting the exercise of power to a regulated pattern, in reality they cannot be expected to restrain traditional power. For, unless abolished or emasculated (completely constitutionalised), traditional power tends to get the better of modern devices by sheltering behind modernity and maintaining the reality of its power. The King can use his ministers as a smoke-screen for the exercise of his authority, shifting responsibility to them, when the going gets rough.

It may be pointed out that this is not necessarily peculiar to Kings, and that executive presidents can do the same thing in respect of their ministers. Nonetheless the elective basis of executive presidents as opposed to royal succession introduced a point of variance, in their respective constitutional structure. Again in ideological terms the monarchs depend on religious sentiments which are inherent in their ideologies. Indeed the Kings are intimately connected with religious institutions. The Islamic Kings have traditionally held positions of religious primacy as Imams which flowed from the

doctrine of one God and the paramountcy on earth of his messenger.¹ This has been expressed in the Constitution of Morocco, for example, where the King is styled as Khalif al Amir al-mu-minine (the head of the community of believers).² In a country where conservative and religious sentiments are strong this has deep implications, as could be seen during the constitutional referendum of 1962. A peasant was interviewed on television on the referendum, just before it was held, and he is reported to have replied: "Il n'y a qu'Allah, le roi, et oui"³ (there is only God, the King and yes). Thus the social position of the King as inhering in Islamic institutions impinges on his constitutional^{position} as expressed in a "modern" constitution.⁴

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1. La ilaha ill'Allah, Muhammadum rasul'illah: 'there is no god but God; Muhammad is the messenger of God'. 'Imam' is the name of the head of a Moslem community whose duty is to be the Khalif (successor) of the prophet, and as such, to guard the faith and to maintain the government. Abu Bekr, the first successor of Muhammad adopted the title Khalifat rasul-illah (successor of the messenger of God), whence the term Khalif. Succeeding generations of Sultans have claimed direct descent from the prophet, in order to legitimise their rule.
 2. cf. art. 19.
 3. cf. Jeune Afrique, Dec. 17-23, 1962. The "oui" refers to the affirmative vote to be given to the proposed constitution.
 4. The equivalent position of the Emperor in the Ethiopian constitutional situation_x has already been noted in Chapter Two.

The presidents, by contrast, have tradition and inertia against them, though they have the conviction that history is on their side, in the sense that their offices are based on ideas of progress which have largely come out of the demolition of tradition. To oversimplify the issues, progress stood for equality and popular mandate, among other things, while tradition stood for privilege and heavenly (or inspired) mandate. Now the will of the monarchies to survive has been demonstrated in their capacities to innovate, as we have seen, and this gives them the aura of modernity or even 'progressiveness'. Moreover, African presidentialism is characterised by authority concentrated in the office of the president. And the devices used to strengthen the office and leader, essential as they are for national integration, lead one to suspect that at bottom they reflect the same approach to the nature of power as is implicit in monarchies. In other words, attempts to incarnate doctrines and sentiments in personalities, contain in them the seeds of creating new privileges, if not (always) new dynasties. After all, Abu Bekr succeeded Muhammad after a dispute on the succession, in order to carry out his work. But the succeeding Khalifs have created dynasties claiming descent from the prophet. The crisis of succession to charismatic leaders who have departed, poses a real problem in elective systems. Is not this, the main reason why dynasties established them-

selves in the first place? On the other hand, it has been asserted by no less an authority than Tom Paine that there had been more wars caused by dynastic feuds than by any other¹ reason.

1. 'The Rights of Man', Chapter One.

CHAPTER FOUR

DUAL EXECUTIVE - WITH A FIGURE-HEAD OF STATE

INTRODUCTORY

The countries which are the subject of this chapter are those which have a parliamentary form of government with a dual (or bicephalous) executive. Since the coup d'etat in Sierra Leone, there remain only three: the Gambia, Lesotho and Somalia. But although the main body of this chapter is concerned with a discussion of the executive in these three countries it is found necessary to refer to cases where such form of government has been abolished, and in particular to Nigeria and Uganda. In the face of a general movement towards a presidential system of government in Africa with (in the majority) a monocephalous executive, the persistence of the parliamentary form of government with a dual executive raises some pertinent questions. Why was this trend not followed in some states? What were the factors that led to the adoption of the dual executive from in the first place; and why has this form been kept in some?

One answer which readily suggests itself is that, given the right atmosphere, the emulation of the ways of the ruler by the ruled is a commonplace fact of history and psychology.

An examination of a random sample of African constitutions and comparison of these with one another and with those of the countries which had acted as their mentors would show this factor to be present to a large extent. The source of the constitutional systems of the three states can be traced mainly to Great Britain in the case of Gambia and Lesotho and to Italy in that of Somalia.

Imitation by itself, however, is not a sufficient explanation, as the rejection of the fact of the Westminster model by Kwame Nkrumah and the later by others shows. More than mere imitation perhaps may be the respect paid to the experience of other peoples with the realisation that man's response to problems is basically the same and that it is wise to adopt what has been tried by others.¹

The constitutional conferences which preceded the final act of birth of these new states must have impressed the event with a preference for what has been described as "the export model". It has often been openly asserted that that model was imposed by the metropolitan power.²

1. cf. the statement of the Congolese leaders at the table ronde conference held in Brussels.

2. cf. K. Nkrumah, 'Africa must Unite' (1962) p.59.

At the constitutional conferences held to negotiate the independence of many African states, one is impressed with the tenacity with which colonial secretaries "argue" the case for the adoption of certain types of constitutional arrangements. "Protection of minority rights" and "fundamental guarantees" were the usual arguments used to give a form of government in which the executive and central government in general are left weaker than under the colonial executive. And this has¹ not been acceptable to Africans.

"Form of government" is a term which describes the functional arrangement of the principal state organs, and it implies the power relationship between these organs - be it co-ordinate, subordinate or super-ordinate. A parliamentary form of government with a dual executive normally implies executive power wielded by a cabinet which nonetheless requires the continuous support of a majority party or a coalition of parties. The figure-head of state (i.e. the second executive) is there to watch over this relationship and to arbitrate in the process of adjustment of power conflicts, which may result from several factors in the society. In Africa, the factors that have in some states been crucial in influencing the form of government are of two varieties,

1. e.g. The Kenya leaders of KANU were forced by circumstances to accept an arrangement in which there was strong regional government under the 1962 Lancaster House Constitution. They then proceeded to dismantle this once they got Uhuru.

though they may be related. First there is the factor of traditional holders of authority, where these have not been weakened. Then there is the ethnic and/or religious element. A new element is added to these, namely political parties, which sometimes have an ethnic or a religious base and sometimes lean on traditional forces. It may be noted at this point that the duality in the executive is only one aspect of the form of government which these factors of diversity may produce. There is also the question of federal structure and of a bicameral legislature, all of which are devices put forward wherever the problems pertaining to diversity exist.

The states under consideration here were not the only ones to start with a dual executive. The majority were launched in a similar way.¹ For our present purpose Nigeria and Uganda provide the best example of the problem which may be best elucidated by reference to them. The failure of the system in these two states is caused by a number of factors which could not be dealt with here in any detail; nor is the question of duality in the executive necessarily a crucial factor. But it is one of the factors, and a discussion of it in connection with circumstances in which it has failed gives poignancy to the study of cases where it has not failed.

1. Only Botswana and Zambia became republics upon independence.

By contrast to those in Nigeria and Uganda, the position of the traditional rulers in the Gambia and Sierra Leone is relatively weak. Whatever potential threat they may have constituted at the time of independence or before, was neutralised by successful political manoeuvres. In Sierra Leone also the chiefs representing the interior region known as the Protectorate were made part of the new political order by the late Milton Margai through an astute political strategy formalised in constitutional provisions which required that as many as twelve chiefs must be members of the uni-cameral legislative body. They were thus incorporated in the representative assembly together with the "commoners". The party in power, in any case, started as a champion of the cause of the inhabitants of the Protectorate, as against the interests of the creole-dominated elite of the coastal region. Even there, however, the political organisation of Milton Margai was not such as to constitute a threat of extinction of the chiefs, unlike the PDG of neighbouring Guinea. Again, in Lesotho they were caught in the wave of modern political movements. Thus Chief Leabua Jonathan, the Prime Minister, heads one of the largest political parties, while the paramount chief (King) was made constitutional head of the state. But unlike the position in Sierra Leone, bicameral legislature was established in Lesotho, with the senate comprising of thirty-three members of whom twenty-two are chiefs and the

remaining eleven are appointed by the King. They owe this position to their traditional place in society. This may not become an important issue in relation to the dual executive as long as the prime minister has himself some close ties with the traditional ruling groups as Chief Jonathan seems to have. But if this should change then the issue would assume a different¹ aspect and perhaps precipitate crisis. The idea of an "upper house" composed of traditional elements helps to entrench these forces and encourage them to foster the sentiments on which neo-traditional parties like the Kabaka Yekka are nurtured. It would be a meeting ground of traditional rulers to forge a new unity and perhaps constitute an opposition to² a strong government whose programmes affect their interests.

In Somalia, the factor of "chieftaincy" is not of much significance; and in the absence of an ethnic diversity, the problem there_x was related to multiplicity of political parties and factions and sectional interests, which had developed during the last few years before independence.

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1. See pp. 179-24 below, for the functions of the King of Lesotho, and for the crisis of December 22nd, 1966.
 2. In Ghana the House of Chiefs was adopted by the CPP only as a temporary compromise for tactical reasons, and at not time did the CPP lose its grip and allow the Chiefs to control the political process. The same is true in Tanzania and Malawi. In Nigeria the size and power of the traditional and conservative north was a factor, among others, that determined the establishment of a bi-cameral legislature and a dual executive.

As explained already, to appreciate the full significance of the factor of diversity as bringing an influence to bear on the structure and form of government of a state, it is necessary to give a brief account of cases where the experiment was marked by failure. The changes which have rocked Nigeria and Uganda have some implication to many other African states where the conflict involved has not been resolved, canalised or rationalised.

The Uganda case has special significance in the context of the present inquiry for a number of reasons. Firstly, it provides an object lesson on what can happen when the elements of conflict inherent in the idea of a divided executive are present in an extreme form and built in the constitution. Not only was the status and role of the traditional holders of power fully recognised in the 1963 Uganda constitution, but the Uganda parliament was given no power to make any law affecting any aspect of the office of the Kabaka and his government in Buganda. The seed of conflict was thus embedded in the constitution. It created a sharp and mutually contradictory alignment of forces within the government. In reality the relationship of the Kabaka as President of Uganda and of the Prime Minister was not one between a constitutional head of state and an executive prime minister in all respects. It is truer to say that there were two prime ministers.¹ In such

1. cf. Morris and Read, 'Uganda, The Development of its Laws and Constitution' (1966) pp. 87-201.

a situation disputes inevitably arise setting the two executive 'heads' on a collision course, and one eventually ends by abolishing the other and establishing a unitary executive.

Secondly, the Uganda experience demonstrates that where there are two executives bent on mutual destruction, or competing for supremacy or even parity within one constitutional system; and especially where they represent opposing views on fundamental issues, in the ensuing conflict and attempts at gaining ascendancy traditional forces can be quite adept at mobilising highly effective support from sections of the population. In Uganda this happened because of the special position of the Kabaka in the Buganda society, which was entrenched in the constitution. The conflict took a turn for the worse because this position was activated and projected on to Uganda national politics by the emergence of neo-traditional party called the Kabaka Yekka (the Kabaka only). This party which was an ally of Obote's began to challenge and attack the central government of Milton Obote, over some issues. In Buganda itself there was a government of the Kabaka which constituted a centre of loyalty and opposition, attracting to it some young educated Baganda. Ironically there was an alliance between Obote's party and the Kabaka Yekka, entered previously in order to defeat another party. Once Obote's UPS was in power, the Kabaka's party gradually

constituted the most vocal opposition to Obote's government. The history of this opposition, however brief, has many sides to it, and one can oversimplify. But the relation of government and opposition, and in particular between Obote and the Kabaka became strained when Obote's party was joined by recruits from the other party - recruits whom he suspected to be Kabaka men with a ~~disguised~~ aim to destroy him and his party and take over the government. Suspensions of a "palace coup" led by people from his own party added further fuel to the fire that was smouldering.¹ Then on February 4, 1966, the leader of the Kabaka Yekka, Mr. Daudi Ocheng, accused Obote and his defence and information ministers of receiving looted gold and ivory worth £25,000. From then on it was a matter of time, the question being who would strike first, and how. The rest is history.

Thirdly, in the context of the question why a dual executive is kept or abolished, it is worth remembering in the light of this particular experience, that in the Hobbesian situation of "war of each against all" with a variety of conflicting claims and threats of division, the effort to keep law and order, and to keep the nation going becomes a major consideration. This, of course, is not new; but what makes it new to Africa is that people controlling the apparatus of newly formed states are trying to build nations out of

1. Mr. Grace Ibingira, the Secretary General of Obote's party and a minister in his government, and other ministers were later arrested.

states, which are at the moment fragile. This point cannot be over-emphasised.¹ The maintainance of unity is a sine qua non of all other efforts. Therefore when their control of the state apparatus is threatened the forces who wield weapons of violence must be called upon to play a role. At that stage, the armed forces become decisive elements in the bid for supremacy, just as political parties are crucial at the "campaign" level of the conflict. This becomes relevant in relation to the distribution of power between the head of state and the chief of government, and especially as regards the control of the armed forces. In the case of Uganda the role of the Kabaka as President of Uganda and King of his own Buganda compounded by his personal propensities for leadership made the final showdown inevitable. But after Obote struck the decisive blow he could argue that law and order and national unity had to be maintained; and that the Kabaka who, as President, was a symbol of national unity, betrayed his trust in advancing political claims which were disruptive of national unity. This argument seems to have won the day judging by the absence of rebellion in Buganda. One of the results of a situation where a threat to unity becomes imminent but is met effectively is that it stimulates centralising tendencies with the consequential abolition of duality

1. In Chapter Six this will be taken up as the point of reference of African constitutional (and political) development.

in the executive, as well as perhaps duality in the legislature and in parties.

The Nigerian experience is more involved, but the implications are the same. There again - to oversimplify - the position of the Prime Minister of the Northern Region, the late Ahmadu Bello, controlled the federal government as the President of the party (NPC) with a majority of seats in parliament through the Federal Prime Minister who was his deputy as leader of the NPC. Though the position was thus different, in both countries the seed of conflict was present when they were launched upon independence.

The abolition of a dual executive through the overthrow of a government or dismissal of some of its members is not limited to Anglophonic Africa. In Senegal Senghor dismissed (and imprisoned) Mamadou Dia, and later declared a unitary executive. In the Congo (Kins) about a year after the military coup of November 1965, Mobutu abolished the office of Prime Minister. The crisis which led to a military take over in Dahomey in December 1965 was centred partly on the conflict between President Apithy and Prime Minister Ahomadegbe. The crisis in Senegal is of interest in at least one important respect. The dual structure in the executive before the crisis, reflected in terms of the personal power relationships between President Senghor and Prime Minister Mamadou Dia,

which was also reflected in other institutions. Mamadou Dia had a majority support in the political Bureau of the party (the UPS), whereas Senghor had a majority support in the National Assembly. Mamadou Dia claimed that the decision of the Bureau should prevail over that of the National Assembly. This Senghor did not accept. Dia tried to prevent the National Assembly by force from passing a vote of confidence on his government. The conflict was resolved by the military over which Senghor had control, not only by virtue of his position of being the Head of State and the Commander-in-Chief, but also through special relations.

With these introductory remarks we turn now to a consideration of the constitutional positions of the executive in those states where it still exists in a dual form - Gambia, Lesotho and Somalia.

SECTION I - THE HEAD OF STATE

There are two types of heads of state in these countries: monarchy (The Gambia and Lesotho) and presidency (in Somalia).

A. MONARCHIES

1. The Gambia

In the Gambia the head of state is the Queen of Great Britain. The Gambia is in a constitutional position through which all former British territories of Africa (and elsewhere) have passed immediately after independence. The Queen is re-

presented in the Gambia by a Governor-general who acts on her behalf. Therefore a discussion of the office of Head of State of the Gambia must focus on the office of the Governor-general, who was styled thus after independence.

The status and powers of the Governor-general in the Gambia under the present arrangement is representative of those of other former British territories in Africa at a similar stage of constitutional advance, particularly those that acceded to independence after 1957. The same is also true of the stages before independence. An account of these questions in relation to ^{the} Gambia has therefore some general relevance. In as much as there has been an impact of the colonial system on present African systems of government it would be of interest to look into the status and powers of the Governor-general. The office of the President in the republics has been influenced by the office of the Colonial Governor in no less measure than the cabinet has by the executive council.

Appointment

Although the appointment was formally made by Her Majesty, and the Governor-general held office "during Her Majesty's pleasure...", it was the British government, and in particular the Secretary of State for the Colonies (later changed to Commonwealth Relations) who had the real power of appointment.

In other words, the political decision was taken by the government and the (final) legal act of appointment was made by the Queen. The Governor-general legally represented the Queen and exercised his functions in her name. But this is a legal fiction; politically it is the Gambian Parliament which has taken over in this respect, the function of the Secretary of State.

There are no provisions on the qualifications of a Governor-general in the Gambia requiring him to be a citizen¹ of that country, and this has been typical in Africa. The question of his removal before independence was a matter between the local government and Her Majesty. The status of the Governor-general has sometimes been equated in all essential² respects with that of the sovereign in the United Kingdom.

Functions of the Governor-general

Historically the powers of the Governor in the colonies had³ amounted to virtual autocracy. The Governor, during the phase of Crown Colony, has been likened to a Tudor Monarch. Whatever his position in relation to the Colonial Office - and that may have varied from person to person and from one situation to another - his position vis-a-vis the colony was unchallenged.

1. e.g. in Malaya, the Governor was required to be one born in that country, cf. de Smith, op.cit., pp. 91-92.

2. de Smith, ibid.

3. cf. Wiseman, op.cit., p. 15.

He enjoyed almost absolute powers; his decision was final and his responsibility ~~was~~ only to the "home government" which, to the African, was as remote as "the heavenly mandate" of an absolute monarch. In reality, of course, the general postulates of colonial policy and the personal qualities of the individual governor meeting administrative necessities qualified the apparent absoluteness of the rule.

We have seen how the growth of the executive council was accompanied by a proportionate decrease in the powers of the governor. In the period immediately before independence the situation is marked by a complex set of arrangements in which the governor has gradually withdrawn almost to the background but still exercises reserve powers and residuary personal discretion. In the pre-independence constitutional arrangement of the Gambia as late as 1962 under the Gambia (Constitution) Order-in-Council (1962) the governor is given powers ". . . under the order or any other law and such other powers and duties as Her Majesty may from time to time be pleased to assign to him." Moreover he was required to exercise such function in accordance ~~and~~ with instructions as Her Majesty may from time to time see fit to give him, subject to the Order and any other law by which the powers and duties were conferred on him. The question whether he had in any matter complied with such instructions was not

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to be enquired into by any court of law.

With the emergence of responsible government in the Gambia (as elsewhere at a similar stage) the power of the governor was curtailed, and this is nowhere seen more clearly than in the field of appointment to the executive office of the government. Under the Independence Constitution of 1966 the governor became a Governor-general, who exercises executive authority in the name of the Queen, but whom parliament can divest of powers. The Governor-general appoints as Prime Minister a voting member of the House of Representatives who appears to him "most likely" to command the support of the majority of the voting members of the House.² This formula and the absence of reference to a party with a majority, seems to take care of a situation where there is no bi-party or multi-party system. The ministers other than the Prime Minister are appointed by the Governor-general acting in accordance with the advice of the Prime Minister. The ministers are appointed from among the members of the House of Representatives.³

1. Sect. 5.

2. Sect. 62(1)(2). This formula is in accord with those used in most other African^{Independence} constitutions. The formula used by the 1963 Constitutional document of the Gambia was: "the elected member of the legislature who appears to him to be the leader of the party which commands the support of the majority of the House", which has been considered to be less satisfactory. cf. S.I.No. 1629 1963. S.13(1); and de Smith, op.cit., p. 95.

3. Sect. 63(4).

If occasion arises for the appointment to the office of the Prime Minister or any other minister while the House is dissolved provision is made for the Governor-general to appoint a person who was a member of the House, immediately before the dissolution.¹ For such an eventuality the circle of choice is narrowed down excluding people who had not been elected to parliament. On the other hand as regards the appointment of the Prime Minister the scope of the Governor-general's discretion becomes very wide where there appears to be disputed leadership in the ranks of the elected representatives. Another situation in which the discretion of the Governor-general may be exercised is in the removal of the Prime Minister which may take place if a vote of no confidence in the government of the Gambia is passed by the House; or if at any time between the holding of a general election and the first sitting of the House thereafter the Governor considers that, in consequence of changes in the membership of the House resulting from that election, the Prime Minister will not be able to command the support of a majority of the members of the House.² Such vacancy of the office of the Prime Minister automatically deprives the other ministers of their offices. Any minister may cease to hold his office if he ceased to be

1. Sect. 63(5).

2. Sect. 63(6).

a member of the House of Representatives otherwise than by dissolution of parliament.¹ A minister may also vacate his office if the Governor-general acting in accordance with the advice of the Prime Minister so directs; or in case of the² appointment of any person to the office of Prime Minister.

The foregoing accords with the principle of collective responsibility. The tenure of the Prime Minister is based on the constitutional practice of Britain. The functions of the Governor-general including powers of appointment are carried out in accordance with advice of the cabinet or a minister acting under the general authority of the cabinet except in cases where he is required by the constitution or other laws to act in accordance with the advice of any person or authority other than the cabinet or in the exercise of his own deliberate judgment.³ He acts in the latter capacity in the dissolution of parliament, in the appointment and removal of the Prime Minister or in relation to the question of temporary exercise of the Prime Minister's functions during short⁴ absence or illness; and in appointment of his personal staff. The Prime Minister is required to keep the Governor-general fully informed on the general conduct of the government of the Gambia, and to furnish information he may require with respect

1. Sect. 63(7).

4. Proviso to Sect. 69.

2. Sect. 63(8).

3. Sect. 69.

to any particular matter relating to the government of the
 Gambia.¹ The reserve powers or special responsibilities
 exercised or carried out by the Governor under the pre-
 independence arrangements do not appear in the independence
 constitution. A state of emergency is declared by the Prime
 Minister.² The prerogative of mercy is exercised by the
 Governor-general in the name of the Queen, on the advice of
 an advisory committee on prerogative of mercy, consisting of
 the Prime Minister (who acts as chairman), the Attorney-
 general and not less than two or more than four other members
 appointed by him.³

The relationship between the Governor-general and the
 Prime Minister as fixed in the constitution seems to fall
 neatly in the tradition of British cabinet government. But
~~Unfortunately~~ that tradition is a constantly changing one,
 as we shall see in a later section of this chapter, and cannot
 be permanently frozen in a written constitution which would
 take care of all problems of power conflicts. Secondly even
 if that were possible in Britain, it does not necessarily
 follow that it can in a different state with a different
 background. There have been no power conflicts involving the
 two executives in the Gambia, but the lessons of Sierra Leone

1. Sect. 70.

2. Sect.

3. Sects. 77 and 78.

are instructive, and worth pointing to by way of example. There the dual executive did not help to contain conflict or help resolve them constitutionally. On March 17th a general election was held in which the two major parties contesting were the Sierra Leone Peoples Party (SLPP) led by Sir Albert Margai, the incumbent Prime Minister, and the All Peoples Congress (APC) led by Mr. Siaka Stevens. The results showed an indecisive outcome, (the SLPP 31 seats; the APC 28 seats and two independents). The APC claimed victory, winning four of the five outstanding seats. On March 21st, with one result to come, the state of the parties was given as follows: SLPP 32; APC 31; Independents 2. The SLPP total, however, included five M.P.s who had officially stood as independents, and Mr. Siaka Stevens claimed to have won the election. The election had been held in an atmosphere of widespread criticism of Sir Albert Margai's government, because of its (unsuccessful) attempt to introduce a one-party state. On March 20th, the Governor-general, Sir Henry Lightfoot-Boston asked Sir Albert and Mr. Stevens to agree to form a coalition government. Mr. Stevens refused to agree^{on}/the grounds that this would constitute a betrayal of the people because of the strong opposition shown to the government's earlier proposals. The Governor-general then asked Mr. Stevens to form a government, and, on March 21st, Mr. Stevens was sworn in as Prime Minister, for what must surely be the shortest term of office

ever held. For, a few minutes later he as well as the Governor-general were surrounded by the army and detained. Brigadier Lansana, the army chief, declared a state of emergency. There was a counter coup which took place soon installing another military government in Africa.

A Governor-general caught in such situations has obviously crucial powers. The discretion becomes power. It is quite clear that had Sir Henry asked Sir Albert Margai to form a government on the argument that there was no one clearly commanding a majority in the House, there would have been an outcry from the APC which would probably have led to an army coup led by the officers who effected the counter coup. The essential point here is that in such circumstances, whichever way the power of the Governor-general is exercised, it is not likely that it would necessarily avoid crises. So the institutionalisation of a divided office with its corollary of assumption of those offices by people representing different views or interests does not appear to solve problems.

2. Lesotho

Lesotho is a country styled by its constitution as a "sovereign democratic kingdom." The birth of this kingdom in October 4th, 1966 brought to Africa the first constitutional

monarchy modelled on the British monarchy but with an African King as the Head of State.¹ In a certain sense we find in it the position of the British monarch projected to Africa, but revised and regulated by a written constitution. The King of Lesotho is enjoined to do all things "that belong to his office in accordance with the provisions of the present constitution and all other laws for the time being in force."² The first person to be recognised as the holder of the office of King of Lesotho is the person formerly holding the office of the Paramount Chief (called Motletlehi) under the Basutoland Order,³ 1965.

On the abdication or death of the King, his successor must be designated by the College of Chiefs, in accordance with the customary law of Lesotho, from amongst persons who are entitled to succeed him; unless a successor has⁴ been designated previous to the event of death or abdication, in which case that person succeeds the King. If any such designation for succession is disputed by a rival claimant, and an application is made to the Court of Appeal within six months of the publication of the designation in the Gazette, the Court of Appeal is given jurisdiction to hear the matter. But

1. Sect. 32(1). Strictly speaking the first was in Zanzibar, but the powers of the Sultan were greater there.

2. Sect. 32(2).

3. Sect. 32(3).

4. Sect. 33(1).

such claim must be that the claimant is a better candidate, not simply that the designated successor was not entitled to be so designated.¹ The College of Chiefs may also designate a person to exercise the functions of the King, in case of his temporary absence or illness.² Every designation must be published in the Gazette.³ The College of Chiefs has also power to appoint a regent in case of the monarch is a minor (i.e. under 21) or in the event of permanent absence or disability. Failing this the Court of Appeal has power, on the application of any person, to appoint a regent in accordance with the customary law of Lesotho.⁴

The College of Chiefs is composed of the twenty-two principal chiefs and ward chiefs and other members co-opted by them.⁵

Functions of the King

The constitution makers of Lesotho have shown themselves anxious to model the role of the King upon that of the British monarch. This is explicitly stated in respect of the matters on which the King may exercise his functions with his own deliberate judgment under article 76(2) of the constitution. The executive authority is vested in him in

1. Sect. 33(5).

5. Sect. 89.

2. Sect. 33(3).

3. Sect. 33(4).

4. Sect. 34(1)(3).

the same manner as it is vested in the Governor-general in the Gambia or the Queen in Britain. In other words, ultimate executive power lies with the cabinet and the Prime Minister¹ in accordance with the provisions of the constitution. As in the case of the Governor-general of the Gambia, the King of Lesotho acts in accordance with the advice given to him by the cabinet, or a minister acting under the general authority of the cabinet, or a person or authority other than the cabinet in cases where he is required so to act by the constitution² or any other law.

However, the King may act in accordance with his deliberate judgment in some cases. Under section 76(2) he acts thus in the exercise of the power to appoint or remove the Prime Minister, and in relation to the performance of the Prime Minister's function, in the event of the latter's absence or illness. The same is true in relation to the appointment of the nominated members of the senate whom he appoints, in relation to his Privy Council and in relation to the dissolution of parliament; in the appointment of the members of the National Planning Board, as well as his own staff; and lastly in the exercise of disciplinary control over chiefs,³ save as parliament may otherwise provide. The proviso to

1. Sect. 71(1) and (2).

2. Sect. 76(1).

3. Sect. 76(2)(a-j).

this subsection noted above, states that the King shall refer to United Kingdom conventions in respect of the dissolution of parliament, the appointment and removal of the Prime Minister and the exercise of his function in case of absence or illness. In all the rest he shall act with his absolute discretion.

In case of neglect or default of duty by the King, the Prime Minister may inform the King that he will perform the act himself after the expiration of a period which he may specify. If, at the end of that period, the King has not done that act the Prime Minister may do that act himself and report the matter to parliament. And this is not a justiciable issue.¹ On the other hand the King has the right to be consulted by the Prime Minister and other ministers on the government of Lesotho;² and the Prime Minister is required to keep him fully informed. Also there is a Privy Council which assists the King in the discharge of his functions; it consists of the Prime Minister, one person nominated by the King and another person appointed by him on the advice of the Prime Minister. The function of the Privy Council is advisory only.³ There is also a Pardons Committee which advises the King; it consists of persons appointed by the

1. Sect. 76(4)(6).

2. Sect. 77.

3. Sect. 80(1)(4).

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King on the advice of the Judicial Service Commission.

Finally it may be said that the person who fills the office of the King may well find his position restricted and may as a result be tempted to abandon restraint and make vigorous interventions in government. Recent events have shown that this is a likely course.

The King of Lesotho (King Moshoeshoe II) announced ~~in~~ December 1966 that he would deliver a speech at a mass meeting on December 27th at Thaba-Bosigo, a small village some twenty kilometres from Maseru, the capital. The Prime Minister thereupon invoked his constitutional powers to forbid the King from proceeding to deliver the public speech. It should be recalled that there had been a conflict going back to pre-independence days. The King (then the Paramount Chief of the Basutos) refused to take part in the constitutional conference held in London in July 1966, presumably because he had come to realise that his powers under the proposed constitution would be limited. He had in fact demanded for himself the control over the armed forces and over foreign affairs; the leader of the majority party however, opposed these demands and the British government supported the majority party, and Basutoland became independent on October 4th, 1966 as Lesotho.

The masses came to the appointed place at the appointed date to hear the King. Police used tear gas to disperse them, but they would not go. A fight ensued in which eight civilians and one policeman were killed. The Prime Minister announced that there had been plans to overthrow his government and he ordered the King's palace to be put under armed surveillance and the King put under "house" arrest.¹ The allegation ~~to~~ of a planned coup has not been pursued or substantiated. But some people of South African origin were expelled. The Prime Minister had made reference to the support given to the King by the opposition party, the Basutoland Congress Party (BCP). The BCP did not accept the election results of 1965 which gave a weak majority to Chief Jonathan's National Party. It is also true that the BCP condemned the action of the government which, under the pretext of realism, had co-operated with the government of South Africa. As it happens the King also condemned such co-operation. This common hostility may have created a temporary alliance between the BCP and the King's party, the Marema T'lou Freedom Party (MTFP). Thus a decision by a constitutional king to address a public meeting would easily arouse the fears of the government which had a small majority in its parliament which could be undermined by a train of events

1. He was later allowed to leave Lesotho to complete his studies abroad.

set in motion by such a speech. This the Prime Minister was not prepared to have. Hence his refusal to permit the address and his drastic action which could have easily deteriorated into a chaos had the Prime Minister not^{had} the¹ support of interested "powers", including South Africa.

B. PRESIDENCY

3. Somalia

Election of the President

The President of the Republic of Somalia is elected by the National Assembly in a secret vote by a two-thirds majority of the members on the first and second ballots. In subsequent ballots he may be elected by an absolute² majority.

Every citizen of Somalia who is a Moslem; whose parents were original citizens of Somalia; who is not less than forty-five years of age and who enjoys voting rights³ is eligible to be President of the Republic. The requirement as to religious profession is not peculiar to Somalia; the same is the case in the Mauritanian and Tunisian Republics as well as in the Ethiopian, Libyan and Moroccan

1. cf. L'observateur du Moyen Orient et de l'Afrique, 6 Jan. 1966, pp. 17-18.

2. Cons. art 70(2).

3. Art. 71(1).

monarchies, with the difference in the case of Ethiopia that the Emperor is required to profess the Ethiopian Orthodox faith.¹ What needs further comment is the citizenship of a candidate's parents who must be "original citizens of Somalia."

The Somali Republic came into being on July 1st, 1960 as a result of an act of union between the State of Somalia (formerly a United Nations Trust territory under Italian administration) and Somaliland (formerly the British Protectorate of Somaliland). The reference to the original citizenship of a candidate's parents must, therefore, mean citizenship of either one of the unified states before the act of union.²

The President may stand for re-election³ but consecutive re-election is permissible only once. During the presidential term of office, marriage with a person who is a non-citizen by origin is not allowed. The exercise of other public functions except the right to vote is also not allowed; nor is any professional, commercial, industrial or financial activity.⁴

1. Yet the constitutions of each of these countries solemnly declare the principle of equality of citizens before the law.

2. cf. Law No. 2 of 1st December 1960 and Law No. 9 of 12th February, 1960.

3. Art. 71(1)

4. Art. 71(2)(3).

The election of the President takes place during the last thirty days of the Presidential mandate which is six years from the date of taking the oath.¹ The election is established by the President of the National Assembly. Upon assuming his functions the President takes an oath of loyalty to the state before the National Assembly.²

9 - As the office of the President rests on the National Assembly, the election of a President must take place whenever the National Assembly is dissolved, or when less than three months remain before its termination. The election of the President takes place within thirty days of the first meeting of the new National Assembly, and during the interval the powers of the President in office are extended.³ It is convenient to mention the dissolution of the National Assembly at this point, as it affects the election of the President. The President of the Republic may dissolve the National Assembly before the end of its term of office. He may do this, however, only after hearing the opinion of the President of the Assembly, that the Assembly cannot

1. Art. 72.

2. The form of oath is the following: "I swear in the name of God faithfully to discharge the duties of President of the Republic and to defend the constitution with all my strength for the good of the fatherland and the nation." Art. 71(3).

3. Art. 72(3).

discharge its functions, or that it discharges them in a way which is prejudicial to the normal exercise of legislative activity. The dissolution is done by a presidential decree, announcing the new elections which must take place within sixty days of the dissolution. The retiring assembly retains its powers until the electoral results of the new assembly are proclaimed. But dissolution may not take place within the first year in office of the assembly and during the last year in office of the President of the ¹ Republic.

Functions of the President

The constitution provides that the President is the Chief of State, that he represents the unity of the nation and that he exercises the functions conferred upon him by ² the constitution, and by law.

Draft laws originating from the government are presented to the National Assemblies through the President, who also signs bills and promulgates them into law. The President may also issue decrees in case of urgent necessity. But he can only do this on the basis of proposals to that effect approved by the Council of Ministers, and the decree must be presented to the National Assembly within five days of

1. Art. 53.

2. Arts. 70(1) and 75.

its publication.¹ Similarly all measures delegating power to the executive are issued by presidential decree, on the basis of proposals approved by the Council of Ministers.² The President may address messages to the National Assembly and has the right of convening the Assembly for extraordinary sessions.

The President is the Commander-in-Chief of the armed forces, he ratifies treaties and declares war and peace after previous authorisation by the National Assembly. He is the fount of honour, has the right of pardon, and accredits and receives ambassadors.³ The prerogative of pardon can be exercised only after a law has been passed by a two-thirds majority of the members of the National Assembly authorising to grant the pardon.⁴

These are some of the normal functions of a Head of State, which also form a part of the functions of an executive Head of State.⁵ But, there ends the powers of the President of the Somali Republic. These powers have not been extended or modified in any way. The law on the

1. Arts. 63, 75.

2. Art. 62.

3. Art. 75.

4. Art. 64.

5. See pp.

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organisation of the government deals with the organisation of the government, i.e. the Prime Minister and the other ministers.

As for the President's responsibility, he is not answerable for acts performed in the exercise of his function, except for crimes of high treason or attempts against the constitutional order as provided by law. In case of such crimes he would be tried before the Supreme Court constituted as a High Court of Justice. The decision to try him is taken by the National Assembly upon the initiative of at least one fifth of its members and approved in a secret vote by a majority of two-thirds of the members. The National Assembly has a right to authorise the trial of the President for offences other than the ones mentioned above. Such authorisation must also be passed by a two-thirds majority. Any authorisation for trial has the effect of automatically suspending the President from his functions.²

In the event of suspension from duties or of disability, resignation or death of the President, and in all cases of temporary absence the functions of the President are temporarily exercised, with full legal force, by the President of the National Assembly, or in his absence, by the eldest Vice-President. In case of resignation, the

1. Law of June 3, 1962. No.14. Official Bulletin of the Somali Republic No. 3 to No. 6, 1962.

2. Art. 76(1)(3)(5).

President informs the National Assembly. The vacation of the presidential office, however caused, results in the election of a new President by the National Assembly, within¹ thirty days of the occurrence of that event.

It will be seen from this brief account that the position of the President of Somalia is undoubtedly that of a figure-head President. Its significance lies in the arbitral nature of the office.

In all the three states effective executive power resides in the cabinet which is the principal instrument of policy. The variations in form and in the manner of accession to office of the Head of State does not alter the fact of the underlying similarity of the role. The elimination of the Governor-general in Lesotho and the assumption of his function by a constitutional African King may, of course, entail certain varieties of approach, particularly where the Governor-general is a non-African. This touches on the question of legal sovereignty; Gambia is politically a sovereign state, but legal sovereignty is vested in the Queen of Great Britain. This means there is still a constitutional link between the two countries, whereas the relation between Great Britain and Lesotho has to be found in international (not constitutional) law. The creation of an African constitutional monarch in post-

1. Art. 74.

independence Africa is itself of some interest in institutional experimentation. This presents a point of contrast to the other attempt made in Uganda, where the Kabaka was President of the nation as well as absolute King of Buganda.

No one dare prophesy. So much is happening so quickly. The young King of Lesotho appears to have found his constitutional position restricted as recent events have shown. ^{*} The events have shown that the temptations to make attempts at vigorous intervention in government are there to break the restraint imposed by the constitution. But it is also true that when those who hold real power command the support of the majority, repeated attempts at intervention would precipitate a serious crisis and possibly mean the end of the regime.

A study of Somali social life has shown that the position of the village elders and heads of clans become important at times when the dynamics of social relationship create tension and conflict. At such times there are elders whose words are heeded by the parties to the dispute. It would not be far-fetched to suggest that the position of the Somali President is that of the clan elder writ large. Obviously the stresses and strains involved in modern political life are more complex than village conflicts, but the social attitude inborn

in those who participate in political life perhaps provides a necessary pre-condition for a successful operation of a presidential executive system in which the President is seen as a father figure familiar in the village social life of all involved in political conflicts. This point, however, should not be driven too far. Not everybody conceives the role of the President in these terms. Moreover, the person who holds the office also makes a difference.

The position of the Head of State in Somalia and his role as arbiter between rival factions may be assessed by the record of the first President, who played no mean part in resolving a number of ministerial crises during his first term of office between 1960 and 1966. The future of his office should be watched with interest.

SECTION II - THE CABINET

A. Some General Comments

1. The British Cabinet

The Gambia and Lesotho have adopted Cabinet systems of government based on the British, while Somalia has followed a system essentially on the same lines with a "continental" variation. It would, therefore, provide a contextual setting to make a few general observations with a focus on the British Cabinet system.

It has been said of the British Constitution that its peculiar contribution to political science is not so much representative government as responsible government.¹ The cardinal problem of politics has concerned the establishment of a responsible executive. The dilemma is, on the one hand, if the executive is not responsible its acts will register the will of the master, not the consent of the governed. Its acts must be tested then by continual submission to critical examination. On the other hand, if the executive is continually responsible for its acts, it may lack effectiveness to govern - to get things done. The British solution has been to place the control of administration in the hands of politician-ministers who are members of the House of Commons (an elected assembly) or are represented there by political subordinates. The ministers take important decisions either individually or as members of a collective body of ministers called the Cabinet. Other decisions are taken by civil servants on behalf of the ministers and under their control. One of the rules of the British system of administration is that civil servants must be impartial to party politics, and, as far as possible, anonymous. A minister cannot shelter behind a civil servant; he is answerable before the House of Commons for the decisions of the civil servants in his

1. Jennings, 'The British Constitution', 4th ed. p. 143.

department. Originally, civil servants were excluded from membership of the House of Commons (i.e. from political decision-making), as part of the struggle to exclude royal interference or influence in the House. Both king and civil servants are now required to be impartial. Political responsibility has shifted to the elected representatives and through them, ultimately, to the people. All this is, of course, the outcome of a long historical process. It has been transplanted in its latest form to apply to the African situation in nearly all its aspects in the three states considered under this chapter, and in several other states in regard to the civil service, as a politically neutral zone.¹

Responsible government, which means above all collective responsibility of all ministers together as a cabinet for the whole policy of the government, is closely linked with the growth of party politics in 18th century England, on the one hand, and the transfer of executive power from the crown to the cabinet on the other. The cabinet is responsible to parliament but particularly to the House of Commons. Through the transfer of power to the cabinet and the latter's responsibility to parliament a principle of continuous responsibility of the executive was established.

1. Whether this can work is a question that will be discussed in a later chapter - Chapter ~~Eight~~, ~~Seven~~.

Under presidential systems, executive responsibility is suspended, as it were, for a certain number of years. The American constitution, for example, makes the executive responsible to the people through the mechanism of presidential election every four years. In other words the meeting point between representation and responsibility is fixed by the calendar. Under the cabinet system in Britain, there being no "suspension" of responsibility, in the final analysis it is impossible to separate the notions of representation and responsibility. The British cabinet and American presidential systems are the result of peculiar historical circumstances. In Britain the question of power was (and legally still is) linked with the Crown. There never could be a power vacuum - "the king never dies". After parliament won its battle for supremacy and with the growth of party government, the cabinet (gradually at first) assumed executive power. But the government was part of parliament and owed its support to parliament. Therefore, it had to be responsible to parliament.

In the United States one of the crucial problems facing the founding fathers was concerning the power vacuum at the top. With the removal of the British Crown, a strong executive power at the top was needed. The convention composed of the leaders coming from all the States was a temporary body which was no substitute for a unified strong

executive to guide and hold together a new nation. The American constitution thus created the office of an executive president separate from the elected body and not responsible to it. It set certain limits to his power, but in theory he is not 'responsible' during his four years of office.

What gives the British type a distinctive feature then is the membership and continual presence of the cabinet in parliament to answer questions and to debate issues. The cabinet is, in principle, answerable for any decision of a minister or for any defective administration under his control, unless it chooses to disown the minister for reasons¹ of political expediency. If the cabinet does not disown the minister concerned, it treats the matter as one of confidence on itself. To do this it would depend on its majority and party discipline in the House of Commons. The concept of cabinet responsibility is central to the chain of relationship between ministers, members of parliament and civil servants. A political link is established with the public through the House of Commons and an administrative link through the civil service. The rule concerning the impartiality of the civil service, starting historically for different reasons, has become a mechanism for ensuring a continuity of administration - "the queen's government

1. This happened for example to Sir Samuel Hoare in 1935 over the notorious Hoare-Laval pact on Ethiopia; and in the Crichton Down case.

must go on". The logical conclusion of cabinet responsibility would be a vote of censure or of no-confidence proposed in the House of Commons against the government. If this passes (by a simple majority) it means the end of the government in office and may mean dissolution of parliament followed by a general election.

In practice, all that matters is for the government to have a comfortable majority in the House of Commons and to maintain party discipline. And, as Jennings has written,

"The decision of the cabinet to support a minister is really based not on possible parliamentary consequences, but on the effect which the decision may have on public opinion"

and again:

"Ministerial responsibility to the House of Commons is thus the means of assuring that the government is in tune with popular opinion."¹

The cabinet has changed since the latter half of the nineteenth century. The most important change has been in the growth of the power of the Prime Minister. Some authorities on the subject even believe that now the country is governed by the Prime Minister who "leads, co-ordinates and maintains a series of ministers, all of whom are advised and backed by the civil service."² The most recent view expressed

1. Op.cit., p. 146.

2. cf. J.P. Mackintosh, 'The British Cabinet', 1962, p. 451.

on the subject (and perhaps the most authoritative) is one by the Prime Minister. Mr. Wilson said, in a recent interview:

"the power lies, as it always did, I think, in the cabinet. To the extent that the Prime Minister appoints the cabinet obviously he has a considerable amount of power, but he is not a completely free agent."¹

Mr. Wilson's view agrees with Jennings's view that the office of the Prime Minister is necessarily what the holder chooses to make it, and what the other ministers allow him to make of it. The extent of his power - and this has grown considerably - is qualified by the need to secure the collaboration of his colleagues. In addition to his power of appointment, his power of dismissal and reshuffle places in his hand a potent weapon. But a good Prime Minister is one who depends for his authority not on frequent use of this (unless there was a genuine case for it), but on being "on top of his job", all the time. As the survival of the government very much depends on this, ample support and ready co-operation will not be wanting in the ranks of his colleagues. In a word, there is a mutual dependence between a Prime Minister and other ministers. But this operates against a general framework of relationship in-

1. cf. The Listener, "Where the Power Lies", February 9th, 1967.

volving confidence. The cabinet must have the confidence of the House of Commons (really, of course, they need the support of their party in parliament). The minister must have the confidence of the Prime Minister, as the Prime Minister also needs the confidence of his colleagues. And the civil servant must have the confidence of his minister. Of these, the first viz. the confidence which the government must have in the House of Commons, has become a term of art - or rather of (political) science. If the House, by a majority of one, can pass a vote of "no confidence" the government must resign, as already explained. This is the hallmark of a classical cabinet system, and it has been adopted in Europe and elsewhere. It is the sword of Damocles hanging over the government which must be averted. The most modest claim that may be made for the system is that in consequence of a continual effort to avoid that fate, governments do less evil than good and probably do some good.

2. The Cabinet in Africa.

In the important stage of constitution-making there is a tendency to pursue an ideal type. Only, there is no such thing. When the cabinet system was transplanted in the African countries, it was felt, probably by most, that the British institution could meet African needs adequately. Some of the factors that had produced the cabinet in Britain

were essentially present in Africa, viz., political parties and representative institutions. This view was not to be justified¹ in the majority of states which chose a presidential system. A separate development of the cabinet in some states and the presidential system in others will be of very great interest. No conclusive answers are possible at this stage. We can only describe the system as given¹ and offer comments on some of its implications.

B. The Cabinet in the Gambia, Lesotho and Somalia

1. The composition of the Cabinet

The cabinet in all three states consists of the Prime Minister and other ministers.² There are no provisions specifying the size of the cabinet or the ministers who may be its members. The experience of other countries shows that it is wiser to leave the question of size to the discretion of the Prime Minister to determine according to actual need. On the other hand a minimum of the cabinet's membership is sometimes fixed presumably to avoid concentration of power in a few hands. In Lesotho, for example, a minimum of seven is fixed as the number of office of ministers that may be established which includes the office

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1. For a discussion of the cabinet under presidential systems see pp.301-14, *infra*.
 2. Cons. the Gambia, Sect.65; Lesotho, Sect. 73(1); Somalia, art. 78(2).

of the deputy Prime Minister.¹ Again in Somalia, ministerial assistants participate in meetings of the council of ministers in an advisory capacity. It is also explicitly provided that officers and experts may be called upon to participate² without voting rights.

2. Appointment and tenure

The power to appoint ministers lies with the Prime Minister. The Prime Minister in all three states, as in the metropolitan matrices, is crucial to the formation, life and death of the cabinet. Somalia differs from the other two states in regard to the qualification for membership of the cabinet. The cabinet which is styled council of ministers after the Italian "cousiglio dei ministri", is made up of the Prime Minister and ministers who must possess the qualifications to be elected as deputies. This means³ that they need not be elected members. The political experience of Somalia during the U.N. trusteeship period and particularly in the last years before independence, was one of vigorous and multifarious party activities. The opening made in the constitution for non deputies as members of the cabinet may very well be a safety valve to include

1. Sect. 72(2).

2. Law of June 3, 1962 - art. 4(2).

3. cf. Cons. art. 80(1).

different parties in the government. With the fluidity of political life in Africa generally, a rigidly exclusive mechanism of recruitment to an executive may tend to lead to more animosity. A permissive mechanism as that of Somalia may induce more consensus.

In the Gambia and Lesotho, as we have already seen, the Prime Minister and other ministers must be appointed from among the members of parliament. In Lesotho ministerial appointment may be made from among members of the national assembly or senators who are nominated as senators¹ by the King (i.e. from among senators who are not chiefs).

Before assuming office, ministers take an oath of loyalty. In Somalia the ministers take the oath before the President of the Republic, and the ministerial assistants known as Under-Secretaries of State take the oath before the Prime² Minister.

The tenure of ministerial office in all three states has the same duration as the life of their respective parliaments. Termination of ministerial tenure may take place as a result of a dismissal, or suspension following the institution of impeachment proceedings or as a result of collective resignation following a vote of no confidence

1. cf. Cons. The Gambia, sect. 63(4); Lesotho, sect. 72(3); the appointments of ministerial assistants follows on the same lines in all three states.

2. Art. 78(5). In both cases there is no provision for non-believers.

passed by parliament. As regards dismissal, in Somalia there are no detailed provisions specifying conditions under which the President may remove ministers, as found in the constitutions of the Gambia and Lesotho. Recent experience of cabinet government elsewhere in Africa has shown that, in the absence of explicit provisions for the removal of ministers and in particular of the Prime Minister by the Head of State, the subject can be a source of constitutional crisis. The resort to conventions of metropolitan systems as a solution where there had been no incorporation of conventions in the constitution has been debated right up to the Judicial Committee of the Privy Council. The case which has become a cause celebre is the Nigerian case of Akintola v. Governor of Western Nigeria which was heard by the Federal Supreme Court, and on appeal to the privy council as Adegbenro v Akintola.¹

The facts were briefly as follows. The then premier of Western Nigeria, the late Chief Akintola, had been removed from office by the Governor. Akintola brought an action seeking a declaratory judgment against the Governor and the newly appointed Premier, Alhaji Adegbenro, that his dismissal was invalid. The Governor was empowered under the consti-

1. F.S.C. 187/1962; and (1963) 3 W.L.R. 63.

tution of the Western Region to dismiss a Premier if it appeared to him that the Premier no longer commanded the support of a majority of the members of the House of Assembly. Akintola was deputy leader of the Action Group, the party in opposition at the federal parliament, and led by Chief Awolowo. There had been disagreements between Awolowo and Akintola, and Akintola had been asked by the party's federal executive on May 20th, 1962 to resign his premiership and his party office. He immediately asked the Governor for a dissolution of the regional legislature, but the Governor refused to do this. The speaker of the House of Assembly also refused Akintola's request for the convening of an emergency session of the House to consider a motion of confidence. The Governor received a letter signed by a majority of members of the House of Assembly (including the speaker) asking him to remove the Premier. He dismissed Akintola on May 21st and appointed Adegbenro (a supporter of Awolowo) in his place. This created a constitutional crisis. When the House met on May 25th, after Adegbenro's appointment, disorder broke out, and a few days later the federal parliament declared a state of emergency, and the federal government suspended the new government of the Western Region, placing it in the hands of an administration.

The federal Supreme Court of Nigeria held, by a majority, that the governor's act was invalid on the grounds that his

power of dismissal was to be exercisable only when the House of Assembly had formally signified its lack of confidence in the Premier. The Court reached this conclusion on the basis of what it understood to be a convention in Britain applicable in like situations. The dissenting judgment of Brett, F.J., held that in the absence of an express provision in the constitution limiting the sources of a Governor's information about the strength of a Premier's backing to votes of confidence in the House of Assembly, the Governor was entitled to obtain his information from any other source that was *prima facie* reliable. The Judicial Committee of the Privy Council preferred this dissenting opinion and accordingly reversed the decision of the Federal Supreme Court, in May 1963. The Privy Council's decision caused a new constitutional crisis which¹ need not be described here.

The Administrator of the Western Region delegated special powers to Akintola to enable him, to advise Her Majesty to remove the Governor of the Western Region. This he did and the Governor was removed in December 1962 and a member of NCNC appointed in his place. In the meantime

1. For a discussion of the case - cf. S.G. Davis, "Nigeria - Some recent decisions in the constitution" (1962). 11, I.C.L.Q. 919; O.I. Odumosu, "The Nigerian Constitution: History and Development", Chap. 9; J.P. Mackintosh, "Politics in Nigeria : The Action Group Crisis of 1962" (1963), 11, Political Studies, 126 at pp. 137-155.

Awolowo and others had been arrested on charges of treason. Akintola formed a new party and in coalition with the NCNC formed a government. Now the effect of the Privy Council decision was to render the formation of Akintola's government illegal; Adegbenro was the Premier de jure. The whole affair has been regarded as "an illuminating episode in Nigerian constitutional history in which a political struggle was temporarily transferred to a judicial forum."¹ The essential point about the whole case for our purpose is that the political realities of each situation dictate the course of events. In the absence of specific incorporation of constitutional conventions of other countries, their invocation would not help to resist the will of parties or groups determined to follow a course of action contrary to such conventions. Akintola's government would not vacate office. Instead it introduced a Bill for the amendment of the Regional Constitution. This had the effect, with retroactive force, of altering the Governor's power to dismiss a premier, limiting it to a situation where a vote of no confidence was passed by the House of Assembly. The Bill was passed by both Houses of the Legislature (Regional and Federal). Its main aim was of course to nullify the decision of the Privy Council with retroactive effect. Any controversy that might have arisen on the validity of

1. cf. de Smith, op.cit., p. 90.

such steps was put to an end when Nigeria became a Republic in October 1963. The political struggle which gave rise to the case has been resolved dramatically in directions not expected by either of the protagonists. But the problems posed by the case still remain with dual executive systems in which the power of the Head of State in relation to the executive head remains unclassified, in the absence of detailed provisions or living conventions regulating such relationship. As long as there is unregulated power-relationship, it will not be convention or precedent of other countries, but realpolitik that will determine¹ disputes. Conventions exert influence only when they are living in the minds of significant groups in the nation. The Nigerian crisis of 1962-3 demonstrated the difficulty of the judicial role in an atmosphere highly charged with political tension. Even where the law is not unclarified, the participation of judges to decide between conflicting claims on political legitimacy would impair their inde-²pendent growth.

3. The function of the cabinet

The function of the cabinet in the Gambia and Lesotho

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1. For a discussion in the relative merits and demerits of incorporating certain conventions by reference, cf. de Smith, op.cit., pp. 82-86.
 2. The report of the constitutional commission of Tanganyika must have had the Nigerian crisis in mind when it observed to the same effect. cf. see p.292 infra.

is stated to be to advise the Head of State in whom executive power is vested, in strict law; to advise him, that is to say, in the government of the state. Subject to this and to what has been explained already in this regard, the cabinet has the general direction and control of the government in both countries.¹ The general nature of the provision in respect of the function of the cabinet follows the British example. It has advantages of flexibility, but it assumes that the constitutional conventions of Britain will be followed. Its disadvantages are obvious: it invites the possible resort to arbitrariness, and could lead to crises.

In Somalia, following a continental variation on the Westminster theme, the cabinet's functions are spelt out in detail. The Law of June 3rd, 1962 empowers the Council of Ministers to deal with the following matters:-

- a) major questions of policy;
- b) approval of draft laws to be presented to the National Assembly, and withdrawal of draft laws previously presented;
- c) approval of decree-laws, legislative decrees, and those regulations which require the approval of the Council of Ministers under the constitution or by law;

1. Cons. the Gambia, sect. 65; Lesotho, sect. 73.

- d) proposals for international treaties and major questions of international policy;
- e) settlement of conflicts of jurisdiction between different ministers;
- f) registration with reserve of administrative decrees under the finance and accounts law;
- g) any other matter expressly reserved to the Council of Ministers by the constitution, law or regulation, or deemed by the Prime Minister to be of particular importance.¹

The powers of the Council of Ministers in respect of financial and personnel matters are also provided for by the same law with even more particularity. In financial matters, the council is empowered to deal with the budget; government contracts involving sums above specified amount; the writing off of uncollected revenue above a specified amount; and any other matter expressly reserved to the council by the constitution, law or regulation.² In personnel matters, the council is empowered to deal with the appointment of its own secretary, the president and members of the Supreme Court; the Attorney-general; the magistrate of accounts, and the State attorney (avvocato erariale);

1. Art. 5.

2. Art. 6.

the heads of diplomatic missions; the directors-general of the ministries; commanders and officers of the army, police and any other military force; presidents and managers of public bodies; the members of commissions and inter-ministerial committees; other officers expressly¹ indicated in the constitution, laws or regulations.

All these appointments are made by the President of the Republic in accordance with the constitutional provision which requires that high officials of the state and commanders of the military forces are appointed by the President on the proposal of the competent minister after² approval by the Council of Ministers. The same procedure for appointment also governs the posting, promotion, transfer and termination of service of the above-mentioned³ officers.

These provisions establishing the extent of the Somali cabinet appear (i) to limit the power of the Prime Minister and (ii) to involve the cabinet in decisions concerning matters of detail.

As regards the apparent limitation of the Prime Minister's power, the provisions may be misleading. In fact the Prime

1. Art. 7(1).

2. Cons. art. 87, and Law of June, 1962, art. 7(2).

3. Law of June 3, 1962, art. 7(3).

Minister is in a much more dominant position. He is expressly empowered to direct the general policy of the government. He is responsible for this policy and maintains its unity by¹ co-ordinating and promoting the activity of the ministers. The effect of the explicit delineation of the cabinet's function in Somalia will also be to leave anything not covered therein to the Prime Minister's determination. As if to put the matter of his predominance beyond question the law of June 3rd, 1962 says that the Prime Minister is "directly in charge of the presidency of the council of ministers, which shall provide for the execution of his decisions"². The presidency of the Council of Ministers is an equivalent to what is elsewhere known as cabinet secretariat. The Prime Minister not only presides at cabinet meetings but decides in advance what is to be discussed there and in what order of priority. He does this through his direct control of the secretariat, which also transmits decisions to all the appropriate persons and departments, as well as maintains records. This is a fairly common practice elsewhere, of course, but one function peculiar to the Somali cabinet secretariat is that it is required by law to deal with

1. Cons. art. 83(1); Law of June 3, 1962, art. 3(1).

2. Art. 9(1).

"matters affecting the government in general, all administrative acts relating to personnel employed by the State, which are not expressly reserved by law to individual ministers, planning statistical services and drafting of¹ legislation."

The detailed provisions of the law dealing with the functions of the cabinet in Somalia, though statutory in many ways, raise certain problems of functional distribution between the Prime Minister and the cabinet. The Prime Minister is empowered to "direct the general policy of the government", the cabinet is empowered to "deal with major questions of policy". An auto-centric Prime Minister could conceivably interpret direction of general policy as meaning determination thereof, and act on important matters without the consent of the cabinet. The provision on the function of the secretariat noted above lends credibility to this supposition. It is also interesting to note that the English version of the provision in respect of the functions both of the Prime Minister and the cabinet is at variance with the Italian version in some parts. Article 3 (1) of the Law of June 3, 1962 in the Italian uses the word "determina" (determines), while the English version uses the word "directs". Whether the variance is intentional or a translator's oversight, it maybe presumed determination_x implies decision on policy,

1. Ibid., art. 9(3).

whereas direction implies control and supervision of such. It might be argued that the Prime Minister's jurisdiction can be caught within the cabinet's jurisdiction of dealing with major questions of policy. But it must be remembered that the Prime Minister prepares what is to be dealt with in the cabinet and that he presides at cabinet meetings. Also, such an interpretation would defeat the purpose of the law of June 3rd, which aims at defined functional relationships between Prime Minister and cabinet.

The question cannot be posed ~~as~~ entirely, or even principally, in terms of formal provisions. It is best seen in human and political terms. A division between the Prime Minister and the other ministers in this manner would impose an intolerable strain on the daily relations between them. The observations made earlier in connection with the British Prime Minister are equally applicable here, as the question involves a universal human problem of power. If the relation deteriorates into the extreme and the Prime Minister seeks to dictate in complete disregard of the cabinet, there would be a ministerial revolt to unseat him. In that event he could resort to strong arm tactics which may take the form of the military coup led by the Prime minister or it may take the form of "red guards" operating outside the formal institutional framework. In a country where the cabinet is a new

institution such a revolt would have deeper repercussions than it would in Britain, where there are highly developed institutional shock-absorbers.

The above remarks are, needless to say, equally relevant to the other two states. In a certain sense they are more relevant, as will now be seen. In a cabinet system where the ministers must be members of parliament, some of the more significant under-currents of strain and conflict usually appear before or during elections. The reason is that the fate of the Prime Minister is tied up with the return of his supporters at the election. An important weapon of a Prime Minister at such times (as at all times) is patronage. He may buttress his position by holding out promises of the perquisites of office in such a manner that if there is a likelihood of his party's success at the election, even members of an opposition party may join his "band-wagon". In this way he may inject new support in his parliamentary group which would act as a beating stick to conspiratorial colleagues within the cabinet. The experience of Sierra Leone serves as an interesting lesson, particularly for the Gambia and Lesotho.

The Prime Minister, Sir Albert Margai, inherited in 1964, a parliamentary party which was divided about his succession to the premiership. He did not succeed in building up a

strong support within his parliamentary party. In the contest for nominations for the last fateful election, many of his supporters within his party failed, including his Minister of Works. It is of great interest to recall that the Prime Minister tried to strengthen his party organisation as a vehicle for power in the manner of the PDG (Parti démocratique de Guinée)¹, and that it was when this attempt failed that he announced his intention to form a one-party state. This is logical enough, for as his power base within his parliamentary party began to disintegrate and in the absence of a strong party organisation outside the parliamentary party which he could control, the threat to his position became painfully obvious. Finally, with the announcement to establish a republican constitution (and the apparent abandonment of the one-party idea) a new method was thought out for the reinforcement of the Prime Minister's position. The draft constitution included a provision allowing the Prime Minister six cabinet appointments from among non-members of parliament. This power added to the obvious power of patronage would no doubt have reinforced his position had he survived the storm. Sierra Leone was thus poised half-way between the cabinet systems of the Gambia and Lesotho at one end and that of Somalia at the other. The

1. See Chapter Six.

development there before the military coup must have been watched with great interest, especially by the leaders in the Gambia and Lesotho.

4. Ministerial Assistants

Individually the ministers direct the affairs within the competence of their respective ministries for which they are individually responsible. Ministers are assisted in the performance of their duties by political subordinates who are styled parliamentary secretaries in the Gambia, assistant ministers in Lesotho and under-secretaries of state in Somalia. In Somalia the cabinet gives its opinion on their appointment.¹ In the Gambia and in Lesotho they are appointed from among the members of parliament, excluding (in lesotho) chiefs and their substitutes. Provision is also made in the Gambia for the office of permanent secretaries - a public office - under whose supervision every department of government is placed, subject to the general direction and control of the appropriate minister. Two or more departments may be placed under the supervision of a permanent secretary.² This is familiar language of British administration, and its equivalent³ also exists in the other states even if not provided

1. Cons. The Gambia Sect. 71; Lesotho, Sect. 78; Somalia art. 79(1).

2. Sect. 73.

for under the constitution.

The cabinet is assisted by a cabinet secretary who in all cases acts under the general direction and supervision of the Prime Minister. His office is the counterpart of a permanent secretary and in the Gambia it is stated to be a public office as indeed it is in the others.¹ In Somalia he is appointed by the President of the Republic on the proposal of the Prime Minister, having heard the Council of Ministers.

5. Cabinet Responsibility

Collective responsibility is a cardinal principle in the system of government of all three states. In the Gambia and Lesotho the cabinet is collectively responsible to parliament for any policy decision made or action taken by or under its general authority and for all things done by or under the authority of any minister in the execution of his ministerial function.² This formula seems to exclude the possibility of disowning a minister for reasons of expediency, as it imperatively enjoins collective responsibility for all things done in the execution of ministerial duty. In thus being fixed with written certainty the principle becomes much more rigid than under the British constitution which can be

1. Cons. Gambia art. 74; cf. also Somalia Law of June 3, 1962, art. 4(3).

2. Cons. The Gambia, sect. 66(1); Lesotho, sect. 73(2).

applied flexibly. There has been no case in either the Gambia or Lesotho in which the question has arisen. But a Nigerian experience under a similar provision may serve to illustrate a problem. During the 1964-5 session of the U.N., where the question of South Africa's expulsion from the U.N. was debated, the then minister for external affairs of Nigeria, Mr. Jaja Wachuku, made a statement which opposed the move. The Nigerian cabinet, though opposed to Mr. Wachuku's statement, felt compelled to back him up when the matter was later raised in parliament, because under the formula they were legally obliged to do so.

A necessary precaution has been taken in excluding the application of the principle of collective responsibility in cases of appointment and removal from office of ministers and their assistants. It is also excluded in matters of assignment of responsibility or the authorisation of a minister to perform the duties of the Prime Minister in the latter's absence.¹ Again, dissolution of parliament and questions of prerogative of mercy are not subject to the principle. All of these questions are regarded as properly belonging to the realm of executive discretion. There would

1. cf. Cons. of the Gambia sect. 66(2); Lesotho, sect. 73(3). In the event of the Prime Minister's absence his function is temporarily exercised: in the Gambia by a member of the cabinet appointed by the Governor-general on the Prime Minister's recommendation; (Sect. 68); and in Lesotho by the deputy Prime Minister, or in his absence, by a member of the cabinet, appointed by the King. (sect. 75).

indeed be a shamble if it were to be otherwise.

In Somalia the Prime Minister and the other ministers are "jointly responsible" for the acts and decisions of the council of ministers.¹ There is no explicit provision as found in the constitutions of the other two states, on collective responsibility for the acts of an individual minister. It is particularly hazardous, in the absence of cases, to attempt any conclusion. But it may be said that the absence of such provision would mean that there is no (legal) obligation on the cabinet not to disown a minister should that be necessary.

The hallmark of collective responsibility is collective resignation following defeat in motion of confidence, and this is provided for in detail in Somalia. Within thirty days of its formation the government must obtain the confidence of the National Assembly. The government may also request the confidence of the National Assembly at any subsequent time. The National Assembly expresses its confidence or non-confidence by open vote of an absolute majority of its members. A motion of no-confidence may also be tabled at the request of ten members of the Assembly. A vote of no-confidence results in the collective resignation of the government.²

There have been a few government crises in Somalia. The

1. Law of June 3, 1962, art. 4(4).

2. Cons. art. 82(1)(2)(3)(4).

gravest crisis was one for several months resulting from the defeat of the government of Abdi Rashid Ali Shimarke in a vote of no confidence in 1964. The President, Aden Abdulla Osman, nominated the then Minister of the Interior, Abdi Rajak Haji Hussein, after several consultations. But Abdi Rajak was also forced to resign soon afterwards because parliament passed a vote of no confidence in his government. This time, the President would not accept the resignation and instead again nominated Abdi Rajak who has been Prime Minister ever since. This example shows that even a non-executive President can wield authority through his influence in the face of the pressure of parliamentary power. This can be explained in this instance in terms of the social structure of the country, as already explained, and also in terms of the personal history of the President and the prestige he may have enjoyed.¹

The National Assembly may also bring ministers, including the Prime Minister, to trial for the commission of any offence. Such decision may be taken at the initiative of one-fifth of the members of the Assembly approved in a secret vote by a majority of two-thirds. For any trial of ministers on the initiative coming from outside the National Assembly,

1. President Aden Abdulla Osman has since been defeated in presidential election on June 10th, this year. It is of interest to note that his rival and successful candidate is Abdi Rashid Ali Shimarke. The 123-strong parliament voted 73-50 for Shimarke. cf. Times, June 11, 1967.

the Assembly has to give authorisation approved in secret vote by a two-thirds majority. If ministers are brought to trial on the initiative of the National Assembly, they are automatically suspended from their duties.¹

Conclusion

This chapter opened with a question on the reasons for the adoption and maintainance of a parliamentary form of government, and an attempt has been made to answer the question. What of the future? Prediction is not, of course, possible in the circumstances. But what adds a new dimension to the difficulty in the case of these three states is the peculiar geo-political position of each one of them.

The Gambia is the most artificial of nation states. Its very existence tells a story of the scramble for Africa which left the entire continent a patchwork of states with frontiers drawn arbitrarily for political and administrative reasons of the former colonial powers. The Gambia is just over 4,000 square miles in area and has a population of just over 300,000 (the smallest in Africa). The only exportable crop is ground nut and it cannot meet the cost of maintaining the Gambia as a viable state. Its budget is balanced by an annual grant in aid from Britain. The vast majority of its inhabitants form part of the Senegalese people and the future is best

1. Cons. art. 84(1)(2)(3)(4).

considered to lie in some form of union with Senegal. If that takes place it would put an end to the monarchy under the British Crown, and probably to the classical parliamentary form of government. The possibility of union with Senegal has been doubted by a former Governor of the Gambia, on the grounds that the British tradition of parliamentary democracy¹ in the Gambia is strong and widely held.

Lesotho is one of the enclaves in South Africa. It has an area of 11,716 square miles and a population of 850,000, of whom an estimated 200,000 (half the male working population) cross the border to work in South Africa's gold and diamond mines, and on farms. Only 1,500 square miles out of the total area is cultivated owing to the hilly nature of the country, though much of the remainder is grassland suitable for grazing. The main exports (wool, mohair, wheat, sorghum and cattle) ~~does~~ not meet required imports. 95% of ~~these exports goes~~ to South Africa which also supplies 40% of the territory's revenue from its share of South Africa's custom and excise tax payable under a 1910 agreement. In the face of these staggering facts "independence" and "government" have a hollow ring, and they would have no meaning but for another fact: the determination of the Basutos against incorporation into white supremacist South Africa. This fact

1. cf. Hilary Blood, 'Parliament in Small Territories' in *Parliament as an export* (ed. A. Burns), pp. 247-263 at pp. 260-261.

unites all parties despite their factional or theological differences, and it may prove to be the one fact which will help the preservation of the Lesotho state and affect the nature of internal politics, keeping all internal conflicts within controllable bounds. But of course this will depend on forces outside the control of Lesotho, and on the political development in the whole of Southern Africa.

Somalia's geo-political position is of a different order. In a certain sense it is the opposite of Lesotho's. The Republic is bordered by Ethiopia, Kenya, the Indian Ocean and the Gulf of Aden, and shares some forty miles ^{of} common frontier with French Somaliland. Somalia claims parts of Ethiopia, Kenya and the whole of French Somaliland, as belonging to her. Ethiopia and Kenya on the other hand are determined to maintain their territorial integrity. Tension has therefore been built up along the borders of the Ogaden province of Ethiopia, and the northern frontier district of Kenya, and several outbreaks of violence have taken place in the past few years. Short of an agreement towards some form of unity of the whole region, the horn of Africa threatens to be an area of conflict, and this will no doubt affect not only the relation of the states concerned, but their internal politics as well.

Finally it may be concluded that the system of government with a divided executive power does not seem to have much

appeal in Africa. There does not appear to be any evidence that it existed in any past African political systems. The dual executive structure introduced in post colonial days, which was partly designed to distribute power and contain power conflicts, has not worked in many cases. Indeed, in some the existence of two executives exacerbated the conflict, leading to the abolition of the system. In this sense, although the problem is many sided, the form of government seems to have contributed to constitutional crises. The root cause of such crises is an internal contradiction of socio-political and economic nature which manifests itself in personality feuds and power struggle. In freezing such contradictions in the constitution, the institutional form may contribute to crises rather than resolving them.

Whether the system will survive in the three states of the Gambia, Lesotho and Somalia is a matter of conjecture. If the attitudes of the people in the states is attuned to the system and provided the system can in fact serve a useful purpose, the answer may be positive. At the moment all that can be said by way of conclusion is that, with the possible exception of Somalia - and there again it is not a certainty - it does not seem possible in the African situation to find a person who has the appearance of power but who does not exercise it, and a person who exercises power but does not have the appearance of it.

CHAPTER FIVE
EXECUTIVE PRESIDENCY

SECTION I - THE PRESIDENT

A. Institutional Antecedent

The constitutional development of the majority of African countries in the years of autonomous government is marked by a good deal of imitation of metropolitan systems. This phenomenon continued to exist in many cases even after the achievement of complete independence. This is perhaps understandable as all new constitutions are more or less inspired by some model or other. The countries of former "British" Africa began by adopting the Westminster model, those of "French" Africa followed the French model and the ex-Belgian territories were influenced by the Belgian system, in each case modifications being made to suit local conditions.

In former "British" Africa the monarchical system was at first introduced harnessed with a Parliamentary form of government, à la Westminster, with Her Britannic Majesty as the Head of State. In former "French" Africa the accession to independence saw the rejection of the classic parliamentary system at the outset. This was fortuitous as far as Africa was con-

cerned. The weight of French constitutional tradition might have fallen on the meagre shoulders of the new African States, had the tradition itself not been subjected to a major change under the Gaullist Constitution of 1958. The time and the political circumstances under which this constitution had been promulgated coincided with, and to a large extent produced, the accession to independence of most of these States. For one of the subjects of the terms of Reference of the Comité-Consultatif Constitutionnelle which studied the draft of the 1958 Constitution was "the solution of the problem in Black Africa."¹

There are of course states whose constitutions were modelled not on European Metropolitan systems - or, at any rate, not directly or principally. Liberia is one example, the U.A.R. is another. At all events, in all cases institutional inspiration and the reasons for adoption of certain principles or practices (or, their rejection) are complex. Furthermore, they are not always traceable to a single system. It has been suggested, for example, that the Guinean Presidential regime has borrowed from contemporary constitutional practice of the United States of America.²

Nevertheless Guinea's decision to reject the offer of

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1. See Recueil des Textes relatifs au Referendum Constitutionnel Paris. Imprimerie de l'Assemblée Nationale, 1958.
 2. cf. Leo Hamon. Les Constitutions des Républiques Africains et Malgache d'expression Française. Introduction. This is difficult to understand or substantiate.

entry into the Communauté in 1958 did not mean the rejection of all^{of} its French constitutional heritage. The influence of the Gaullist Constitution of 1958 is absent in Guinea because of Guinea's rejection of the framework (the Communauté) under which it was proposed. This meant the provisions limiting the role of the legislature and augmenting that of the Executive (present in other states) are absent in the Constitution of Guinea, Even though the system is presidential. The special significance of the Guinean constitutional system is that it shows what happens when a new state chooses to strike out on its own in search of an institution which will provide a basis for political as well as economic independence. The Constitution combines a presidential system (election of the President) with a parliamentary system (control by parliament of the government) thus producing a hybrid regime which, according to some observers, can only be explained or sustained in the context of the one party state, as we shall see¹ in Chapter Six.

Ghana's constitutional history under Nkrumah also illustrates the same process. Nkrumah's criticism of the Independence Constitution of 1957 as "imposed" by the British² Government and his subsequent actions to change it drastically

1. cf. M. Lampué,, in Les Constitutions des Etats d'expression Française rev. jur. et pol. d'outre-mer. 1961, p. 513.

2. K. Nkrumah, Africa must Unite, p. 59.

did not entail the complete abandonment of the heritage of British Constitutional practices. As de Smith has written:

"It is significant that (apart from New Zealand) the country whose constitutional law corresponds the most closely to that of Britain in these matters is Ghana, where the spirit and practices of British institutions are not consciously emulated."

Yet the Nkrumaist constitution of 1960 is a landmark in constitutional development in several respects, as we shall see ⁱⁿ later sections.

The complex nature of the factors governing the relation between the institutional sources and nascent institutions may be further illustrated by the curious fact that while those countries that declared "rejection" of the colonial heritage did not always do so, those that had started by a slavish imitation in many instances proceeded to use this initial act as a point of departure for bold initiative. Thus many of the francophonic states, having first adopted the Gaullist presidential system, have changed it, giving their own new regimes certain original traits.

It may also be noted that the metropolitan powers were not always solely responsible for the transplantation of their systems at moments of independence. This might not appear to be remarkable in the case of the former British and French states, where the grant of independence had been carried out

1. The New Commonwealth and its Constitutions, p. 77.

in most cases under circumstances conducive to institutional emulation. It is remarkable, however, that on the eve of independence of the Congo, despite all the rancour that accompanied the event, some of the more militant nationalist leaders of that country had insisted at the Round Table Conference in Brussels on the introduction of Belgian Parliamentary Government, because, it was argued, it was better to copy a system that "had been tested" than to face the hazards of experimentation. Thus the loi fondamentale of the Congo adopted the Belgian parliamentary system including a non-responsible Head of State.¹

The prime implication of the Westminster model, as we have seen was the fact of dualism in the Executive, in which the Head of State is not an effective head of government. The effective executive is a Prime Minister presiding over a Cabinet of Ministers whose appointment he largely determines. In Africa the dual executive system did not last very long. Ghana set a trend for a different system by introducing a Republican Constitution in May 1960. Ghana's example was followed by others - Tanganyika (1962), Nigeria (1963), Uganda (1963), Zambia (1964), Kenya (1965) and Malawi (1966). In the Gambia an attempt to follow the trend did not obtain the required majority.

1. cf. Jean Buchmann, L'Afrique Noire Indépendante, p. 210.

In the case of Nigeria and Uganda the dualism of the Executive was retained as well as a federal structure of the state; both matters dictated by political factors pertaining to political diversity, as we have seen. Whatever the eventual outcome of the present crisis in Nigeria, it is now clear that the institution of a dual executive was not in itself sufficient to cope with the political problems existing in that country. Whether a unitary executive can cope with such problems is indeed one of the most important questions that need to be answered.

The Westminster model has its counter-part in modified forms in European parliamentary systems. They all have certain common features of which the term classic parliamentary system will be understood to be a referent. In the case of the French parliamentary system, substantive modification has been made by the Constitution of 1958 giving rise to a new term - "parlementarisme rationalisé", i.e. a regime in which executive and legislature work in co-operation, depending on each other.¹ The parliamentary system or "régime d'assemblée" which was practised in the third and fourth Republics of France, and particularly as seen through the eyes of African leaders, some of whom participated in the life of these institutions, was associated with a weak executive. Now, the

1. cf. Lavroff and Peiser, Les Constitutions Africaines, Vol. I, (1961), p. 32.

main feature of the Gaullist Constitution of 1958 was the reinforced position of the President. This feature was considered to be necessary and more easily adaptable for the needs of developing nations than the classic parliamentary system which in its aspect of "régime d'assemblée" had meant the domination of the Executive by the Legislature with perennial crises in government.

The 1958 Constitution was introduced to redress the balance between the two institutions. The leaders of the new francophonic countries of Africa had a good springboard in the Gaullist conception of the position and role of the Executive which suited their needs. But they departed from it in some important aspects. One of these is the creation of a monocephalous (unitary) Executive.¹ Five states in the whole of Africa have now a bicephalous (dual) Executive - the Gambia, Lesotho, Somalia, the Congo (Brazzaville) and the United Arab Republic. In the Cameroun there is a peculiar situation in which the federal system has created the office of the Prime Minister of one of the Federated States. But the Federal Government has a unitary Executive. As will be seen, in both the Congo and the U.A.R. the President is the Executive Head of State with a subordinate Prime Minister and a Cabinet.²

1. On the influence of the 1958 Constitution, see Gonidec, Droit d'outre-mer, Vol. II, pp. 396-416.

B. Innovation

Until very recently the study of Public Law divided constitutional systems into three categories, according to whether they belonged to the British, the American or the French type. We have had a glimpse of the British and French types, and have seen that the constitutions of the new African states have departed from them. The reasons are historical or political or both. The metropolitan models were said to be found inadequate to cover the situation in an African context. Even the new Gaullist model, for example, which was emulated in detail to provide African leaders with an initial cloak of legitimacy, as it were, was later modified substantially.

The American type represents what is otherwise known as a presidential regime, whose main distinguishing feature is a strict separation of powers. The doctrine of separation of powers did not find favour with the new trend. The inadaptability of the doctrine in the African reality has been explained chiefly in terms of the prevailing tendency towards creating a one party State. The existence of a single dominant party impinges on the constitutional system. Even in countries where the party is subordinated to constitutional organs, as for example in the Ivory Coast, and the doctrine of separation of powers is followed, it is more apparent than real. Power

is sought to be unified and concentrated, not diversified and divided. This has been called "closed power",¹ which does not tolerate plurality of opinions and attitudes. Because this power is "closed" the political party on which it rests tends to eliminate others and become the only or the dominant party in the state. This fact manifests itself in the structure and functioning of the state apparatus and particularly in the Executive; and as a novel constitutional phenomenon it deserves to be studied from as many angles as possible.

At first glance, it may appear that some of the unitary executive systems might be traced to the American type. Liberia's constitution, for example, was modelled on that of the U.S.A. and, in form, still reflects it. Again, Nkrumah's study and long years of stay in the U.S.A. may have conceivably influenced some of his thinking on this subject. On the other hand his associations with Sékou Touré and Modibo Keita and their radical approach; his concept of the African personality, with its inherent claims for self-expression at all levels; his advocacy of African unity, with its demand for urgent methods at the top level; his attachment to a militant form of socialism, with its

1. cf. G. Burdeau, Traité de science politique 1, p. 464 et seq.

intolerance of liberal democracy and economics; his pre-occupation with and fear of what he later called "neo-colonialism : the last Stage of Imperialism" - these factors may explain some of the novel features of Nkrumah's Republican Constitution. Whatever influence the American Constitution might have exercised in the mind of Nkrumah, it is clear that it did not find much place in his Republican Constitution.

It is also clear that traditional classification in Western Public Law does not embrace the new constitutional systems of Africa which do not fit into any of its categories. This presents a challenge. One simple response to the challenge is of course to dismiss the new systems as authoritarian regimes. But that would not be very helpful. Some useful attempts have been made to discern a general pattern in the new trend crystallised in the African Constitutions.¹

The new trend has been summed up by Buchmann as African "neo-presidentialism". The term purports to represent the

1. cf. Hean Buchmann, (1) op.cit., pp. 214-215; 256-283, and (2) La Tendance au présidentielisme dans les nouvelles constitutions négro-Africaines, 1962. 12 Civilisations 46. Leo Hamon, 11 Civilisations 245, (1961). P. Idenburg, 15 Rev. Jur. et Pol. d'outre-mer 195, (1961). A Gandolfi, ibid., p. 369. P. Lampué, ibid., p. 513. de Smith, op.cit., pp. 230-252.

position, in Africa, where the decline of parliamentarism is accompanied by the consolidation of Executive power which tends to be hierarchic and personalised, with one (or a dominant) party as its base. This tallied with what Burdeau called "closed" power. At the same time a great deal of the framework of classic systems is preserved. Functional division, if not complete separation, exists between the three organs of state. Parliament is universally elected. But one of the consequences of African neo-presidentialism has been the emasculation of parliament and the increase of the legislative power of the Executive. Neo-presidentialism grew out of a sort of neo-parliamentarism which was seen on the African stage in the first exciting days of independence, and then was seen no more. It was characterised by a more vigorous role played by parliament - even though the Executive enjoyed comparatively more power than under classic parliamentary systems. There was, in the early days of independence, more vitality and a sense of purpose displayed by parliament, spurred on, in many cases, by the presence of a vocal Opposition, however small its voice. With the advent of the One party, the small voice was silenced and gradually parliament lost its vigour, if not its usefulness as a medium for legitimising Executive decisions and for creating national consensus.

An attempt has been made, particularly by Buchmann, to

identify certain salient features of this neo-presidentialism. One trait, as has been observed, is the movement towards a hierarchic structure of power in which an "irresponsible" Head of State plays a dominant role mostly in a monocephalous system. The Head of State is Head of Government as well as, in most cases, head of the dominant party. He exercises extensive legislative powers.

This attempt implicitly elevates neo-presidentialism to the level of a new analytical concept. The approach - useful as it is - ~~goes~~overreaches itself when Buchmann proposes^x certain unique properties of African neo-presidentialism, viz. (1) the designation of the President by parliament and not election by universal suffrage, (2) the Presidential term of office being linked with that of parliament.¹ This was typified by the Ghana model under the Nkrumahist Republican Consitution of 1960. But another variety is exemplified by the Ivory Coast in which the President was elected by universal adult suffrage. This affects the internal consistency of the concept expounded in the first attempt by reference to the Ghana model. For, apart from the variety in the manner of access to office, the nature and extent of the President's powers were almost the same, as we shall see. This difficulty was met by suggesting a new term to describe

1. cf. Buchmann (1961) 12 Civilisation 46, p. 60, 61.

the Ivory Coast model, viz. "présidentialisme renforcé",
¹
 or reinforced presidency.

A great deal of the institutional life of these new countries is in a state of flux; they are in many respects experimenting. Even some of the central structure and organisation is tentative. All this leads us to qualify the concept of neo-presidentialisme". The practice of coining new terms whose content is elusive is of questionable value. These cautionary observations do not in any way detract from the value of the analytical work which summed up the new trend in Africa. In later sections of this chapter, a detailed description and analysis of the organisation and structure of the Executive will be made, including the various ways in which the President is elected, some of which bear striking marks of originality. A pattern will emerge in this respect, as well as in the nature of the President's function, in the mechanism by which his functions are discharged.

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1. cf. J. C. Juergensmeyer (1964) J.A.L., pp. 157-177, and esp. p. 175. The author of this article starts with Buchmann's thesis on the new concept, and ends with the conclusion that "reinforced presidency" has replaced "neo-presidentialism". Unfortunately, far from clarifying the issues, this has the effect of adding further complication. This is particularly so, in retrospect, having regard to the emulation of the Ghana model by Tanzania, Zambia and to a certain extent Kenya, as we shall see. See pp. 247-52 *infra*.

C. The Status of the President

The term status is here used to include, inter alia, the modes and conditions of access to office. Status in its dynamic aspect implies role. Role also implies function and hence power; but this latter will be considered under a separate section.

1. The Role of the President

Mention will be made here mainly of the role of the President in his capacity as Head of State and leader of the whole nation. Although it is difficult to say where his function as Head of State ends and his function of Chief Executive begins - indeed it is unrealistic to make such distinctions in a unitary system - yet it may be permissible to make an attempt at distinction for purposes of exposition.

All the constitutions of the African states contain the usual provision on the role of the President as symbol and guarantor of the independence, unity and integrity of the nation. He is required to be the guardian of the constitution, to ensure respect for it, to supervise the execution of laws and the proper conduct of public affairs in general. These are no hollow phrases. Manifest and repeated failure in this duty may be attended by resort to unconstitutional means to redress grievances. A necessary concomitant of the concentration or personalisation of power is the readiness with which blame can be laid at the door of the President.

The prospect of this taking place, which is by no means remote, as recent upheavals have shown, may exercise a positive influence in causing or enabling the President to discharge his functions well.

There is nothing new in the role indicated above. But to the exalted position of the President as Head of State in the traditional sense, is added a new emphasis on his role as a nation's prime mover - a role which has infinitely more dynamic possibilities than that of traditional rulers. This is so because of the explosion of human energy and the ever-rising expectation involved in the politics of election out of which the Presidents of these new states emerge to lead their people. The general policy has been to canalise the hopes and aspirations aroused in these events for change - for material progress. The President who, in his person or through his office, embodies the hopes and aspirations of a people at crucial moments of its history has obviously an additional burden added to his task. This is the case in Africa. The nature of this task in regard to the exercise of power will be examined in more detail later.

2. Accession to Office

The constitutions of African states pay due homage to democratic principles. Many of them contain provisions with formulae and slogans expressive of these principles, such as "government of the people, by the people, for the people" and

"sovereignty emanates from the people", etc. Universal suffrage as the source of legitimate authority is recognised as one of the pillars on which the constitutional system rests. It is universal, equal and secret in all cases; and it may be exercised directly or indirectly.

Based on this option two types of presidential election exist:- (i) direct and (ii) indirect. There are, it is true, Presidents who owe their office to modes other than election. But in all of these cases promises are made to legitimise the initial naked power by holding election.¹

(i) Direct election. The constitutions of most African states provide for the election of the President by direct universal suffrage. The following states belong to this group: Cameroun (art. 10), Gabon (art.13), Guinea (art.22), Ivory coast (art. 9), Liberia (art. 3, sect. 1), Madagascar (art. 18), Mauritania (art. 13), Niger, (art. 9), Rwanda (art. 52), Senegal (art. 21), Tanzania (Interim Cons. art.7(2), Tunisia (art. 40). Provisions are made in each constitution for the candidacy of the Presidency, the mechanism of the election from nomination to the assumption of office. The provisions are detailed in some, brief in others, detailed regulation of the election being left (in all cases) to subordinate laws.²

The qualifications for candidacy are on the whole similar to those under the metropolitan systems: the usual require-

1. See chapters 8 and 9.

2. In most cases the party central Executive nominates the candidate, in some cases there is an Electoral College (to nominate a candidate) consisting of the National Executive Committee of the party and of other members of the party such as members of the national committee of party auxiliaries (e.g. Malawi Cons. art. 11).

ments of citizenship, minimum age (35 in most, 30 in a few), physical and mental fitness, and enjoyment of civil and political rights at the time of candidacy. Some peculiarities may be noted in passing. The Constitution of Rwanda provides for a maximum age limit (60) and also requires that the candidate must be a male citizen¹ who is a local councillor (art. 54). In the Cameroun, because of the federal set-up, the candidates for the Presidency and the Vice-presidency must not come from the same state (art. 35). In Mauritania and Tunisia the candidate must be a Moslem (Cons. Mauritania, art. 10; Tunisia art. 38).

The Mechanism of Election

During the first years of self-rule. When the new states gained independence there existed in most of them more than one party. The method^{of} electing the Chief Executive was therefore invariably designed to ensure the election of a person who was leader of the Party commanding a majority in parliament.

In former French territories there was no uniform procedure. In some, a candidate was required to be supported or nominated by the President of the National Assembly, who would act as an interim Head of State and open consultations. This

1. The Rwanda Constitution provides that men and women are equal in the eyes of the law, but that man is the "chef naturel" of the family. Art. 30.

was the case for example in the Ivory Coast and Upper Volta. In other cases the support of a number of deputies of the National Assembly was needed, e.g. in Gabon and Mauritania. Having secured such support the candidate would then present his programmes to the National Assembly. In Madagascar he¹ was appointed by an electoral college.

Under the present constitutions. Most of the constitutions presently in force provide that the presidential election should take place at the same time as the General Election. The details of election procedure such as rules on eligibility, nomination, voting, counting votes, supervision, review and publication of results are left to be regulated by an "organic" law. In most cases there is a marked influence of metropolitan electoral systems. This^{is}/particularly ~~is~~ so in the francophonic states where the French election procedure is present with variations in a few details.

(a) Nomination. A decree is issued by the Executive (usually the Council of Ministers), announcing the date of the election. Other particulars ~~would~~ also be announced, such as the place where nomination is to be placed and the Person ~~or~~ Commission acting as Returning Officer. He is, in some cases, the Registrar of the Supreme Court (e.g. Senegal) and in others the Chairman of an Election Commission (e.g. the

1. cf. Gonidec, op.cit., p. 405.

Ivory Coast); or again, as in Tunisia, a Committee formed of the President of the National Assembly (Chairman), the Mufti (religious head) of Tunisia, the first President of the Court of Appeal, the first President of the Supreme Court of Appeal, and the Public Prosecutor. The nomination must be made a certain minimum number of days before the date of first polling day, the length of ^{the} time varying from state to state.

When nomination is over, a list of candidates is published a certain number of days before polling day. The usual duration of the election campaign is two weeks, and it closes the day before the first voting. This is quite adequate for vital issues to be crystallised and for people to digest arguments for and against. Long election campaigns are not of value in countries where the election can be costly.

(b) Voting. Under most of the constitutions a system of voting by majority is provided for. A candidate must obtain an absolute majority in order to be declared elected at the first ballot. That is to say, he must obtain half of the votes cast plus one. If he does not obtain an absolute majority at the first ballot, a second ballot takes place within a specified period (normally fifteen days) after the first ballot. At the second ballot only relative majority is needed to be declared elected; in other words the candi-

date who obtains the maximum number of votes is declared elected.

(c) Supervision and Declaration of Election. A declaration of election is made provisionally. If this is not disputed before the Election Commission the President is elected. If it is disputed, the Election Commission, which in many cases is the Supreme Court, must decide to uphold or annul the provisional declaration. In case of annulment an election takes place, de novo. In several states (Cameroun, Gabon, the Ivory Coast, Mauritania, Nigeria, Senegal) the Supreme Court supervises the proper conduct of the election. In Madagascar, the Conseil Supérieur des Institutions supervises. In Rwanda a Commission appointed by the bureau of the National Assembly and controlled by the Conseil d'Etat and the Supreme Court, performs such supervision. In Tunisia the election committees watches over the conduct of the election. The supervising body is required among other things to ensure the equality of treatment given to candidates, regarding media of communications, etc.¹

(d) Assumption of Office. The President assumes office after the final declaration has been made out and the term of office

1. See, for example, Constitutions of:- Cameroun, arts. 9, 10; Gabon, art. 7; Ivory Coast, art. 10; Madagascar, Loi du juin 1962, which is an integral part of the Constitution of 1961; Mauritania, art. 13; Niger, art 10; Rwanda, art. 52; Senegal, arts. 25-35; Tunisia, art. 391

of his predecessor has expired. He is normally required to¹ take an oath, the form of which varies from state to state.

(ii) Indirect Election. The constitutions of six states (Congo Brazzaville, Kenya, Mali, Tchad, U.A.R. and Zambia) provide for the election of the President by indirect methods. We may classify these under four different categories:- (a) cameral, (b) collegial, (c) preferential and (d) plebiscitary. We will consider them in that order.

(a) Cameral Election - Mali. In Mali the President is elected camerally in accordance with a strikingly simple procedure. The election is held at the commencement of each legislature, or whenever the government resigns after a vote of censure passed by the National Assembly. (arts. 7, 34-36). In either case the President of the National Assembly, after consultations, designates a candidate to the office of "Président du Gouvernement". The person designated then presents his programme to the National Assembly. This right to designate the President places the President of the National Assembly in a position of great influence, and in the present context of one-party politics he is a member of the same party, and therefore one of the potential successors to the Presidency. There is no provision requiring the President to be

1. He either swears or makes a solemn affirmation to perform the duties of his office with honesty and integrity, to defend the Constitution and the independence and territorial integrity, etc., or words to that effect. The oath is sworn before the National Assembly or the President of the Supreme Court.

a member of the Assembly. But President Modibo Keita has always been a member.

After he has been designated the candidate must then obtain the approval of the National Assembly by a vote of an absolute majority of its members. He is elected for a period not exceeding that of the legislature. His term of office is thus inextricably linked with that of the Assembly. He is elected for five years and is eligible for re-election. (art. 16). This is indirect election at its simplest. We have termed it cameral because it ^{is held} ~~takes place~~ within (and by) the Assembly.

(b) Collegial Election - Congo (Brazzaville), Tchad. In Congo (Brazzaville) and Tchad the President is chosen by an electoral college. There is similarity in the two cases in the composition of the electoral college, with some variations. In the Congo it consists of the members of the National Assembly, of the councillors of the préfectores~~aux~~, sub-préfectores~~aux~~ and municipalities (art. 24). In Tchad it consists of the members of the National Assembly, the mayors and municipal councillors, mayors and councillors of rural communities, and of customary chiefs (art. 6). The inclusion of customary chiefs in Tchad, and their exclusion in the Congo, reflects two different policies on this subject: one conservative, the other radical, respectively. Whether the enlarged composition of the electoral college in either of these states makes the

position of the President more representative than that of Mali_x is open to question.

The procedure of election follows familiar patterns: in the Congo an absolute majority of the members of the electoral college is required at the first ballot. If an absolute majority cannot be obtained a relative majority at the second (and final) ballot decides the election (art. 24). In Tchad a two-thirds majority is required at the first ballot_{;;} and, failing_x this, an absolute majority at the second ballot; and, should a third vote be necessary, a relative majority at the ballot (art. 7). In the Congo, the election takes place twenty to fifty days before the date of expiry of the existing President's term of office; whereas in Tchad it takes place ten to sixty days after the expiry of the term of office,¹ which is a rare provision. The President is eligible for re-election in both states; but in the Congo he is eligible once only.

(c) Preferential Election - Kenya, Zambia. The Presidents of Kenya and Zambia are elected by what may be called the preferential method, in which every candidate standing for National Assembly at a general election is required to state his preference in writing in favour of one presidential

1. But the length of time of a "lame duck" president does not present problems of abuse, which could be perpetrated whether the term is five days or fifty, depending on the integrity of the person involved. An example of such abuse is massive appointment of members of his party or family to lucrative posts.

candidate. The election of the President takes place whenever parliament is dissolved, or the incumbent dies, resigns or is incapacitated.

In Kenya^x the presidential candidate is also required to be a candidate for the House of Representatives. A candidate must be nominated by not less than one thousand registered voters. In order to be declared elected as President a presidential candidate in Kenya has to (i) be elected to the House of Representatives at a general election, and (ii) obtain the declared support of a number of elected members (including himself) exceeding one half of all the constituencies at the same general election. Failing this, or if a President has to be elected at any other time, he is chosen by the members of the House of Representatives, sitting as an electoral college. There is a maximum of five ballots with intervals for lobbying. If a candidate cannot obtain the votes of an outright majority of all the members in any ballot, another general election takes place, and the whole
1
procedure is repeated.

In Zambia the President is elected by a similar method with differences that must be noted: In the first place the presidential candidate is not required to stand for election as candidate for the National Assembly. His nomi-

1. cf. Constitution of Kenya (Amendment) Act, 1964, First Schedule, S.33.

nation must be supported by a thousand electors, and if there is one candidate only, he will be declared elected. If the election is contested he is elected by a system of preference. Every parliamentary candidate must declare his preference in favour of a presidential candidate, who may, if so requested, endorse a preference declared in his favour. But he does not have to make such an endorsement, and lack of endorsement will not invalidate the candidature of the parliamentary candidate; nor can the presidential candidate prevent any preference made¹ in his favour.

There is similarity in the procedure to be adopted in case no presidential candidate obtains more than half of the preferences, in which case in Zambia (as in Kenya) the National Assembly sitting as an electoral college elects the President by an absolute majority in the first ballot. An absolute majority must also be obtained at a second ballot; and failing that, a relative majority at the third and last² ballot.

This preferential system is a neat way of securing the election of the President and his supporters to the National Assembly. The election of the President is tied with that of the Parliamentary candidate whose election would be void if they did not state their preferences. We can see in this an

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1. In Ghana, the presidential candidate had to give his consent to the preferences stated in his favour~~re~~; the chances of success of the parliamentary candidate would thus be carefully considered, before consent is given.
 2. Cons. arts. 33.

impressive method of removing the weakness inherent in systems - parliamentary or presidential - where the Executive could be fettered by a hostile legislature. For in this new system the fate of the presidential candidate is linked with that of the parliamentary candidate.

The system was first introduced by the Ghana Constitution of 1960 which effected a major breakthrough in constitutional development in this respect.¹ It set a pattern which was taken up by other states: Tanganyika (1962), Zambia (1964) and Kenya (1965). The novel feature of this system is the emphasis and pre-eminence it gave to the constitutional position of the President. In Kenya the constitution-makers appear to have been anxious to preserve, along with an Executive Presidency, traditions of the parliamentary system of government.² So the President is required to be an elected member of parliament. The "double mandate" which he must obtain flowed logically from the compromise between a parliamentary and a presidential system. It laid him open to electoral hazards; but once obtained, would strengthen his hand. In Zambia, on the other hand, the position of the President may be weaker in relation to the National Assembly, though stronger in relation to the electorate. Whereas in

1. See S.11 of the Ghana Constitution of 1960.

2. See 'A constitutional triumph over the division of regionalism' by Hon. Charles Njonjo, Attorney-General of Kenya, in The Times, October 20th 1966, p. 27.

Kenya, (as in Ghana, under the 1960 Constitution) it is the preference (and therefore the vote) of the electoral supporters of the presidential candidate that puts him in office, in Zambia every vote cast for a parliamentary candidate is reckoned as a vote for the presidential candidate he supports. In other words, under the system in Kenya (and formerly in Ghana) the President could rely on the support of a majority of the National Assembly though a very small proportion of the electorate voted for him. In Zambia, by contrast, the President could conceivably have a hostile majority in the National Assembly, although he has the support of the majority of the electorate.

The President in Zambia is not a member of the National Assembly. In Kenya, the decision to adopt in part the parliamentary system has meant the President's membership of the House of Representatives. This fact appears to go against the present trend of placing the President on a more independent basis in relation to parliament.

Tanzania has abolished the preferential system with the introduction of the one-party state. It is of interest to note that the Presidential Commission which studied and reported on the "Establishment of a Democratic One Party State" has written:

"The President of the Republic is the living symbol of national unity, as such he should derive his authority from the people. Their votes should be his mandate. For this reason

we have rejected the idea¹ of any form of indirect election. . . ."

It is clear, therefore, that "preferential election" is not necessarily the result of or is related to the one party system.

Whether Kenya and Zambia will follow the example of Tanzania no one can predict. Among other things, the outcome of the experimentation with the "one party democracy" will surely weigh heavily in the minds of the leaders of the two states. The emergence of the Kenya People's Union Opposition party which was formed early in 1966 may present temptations to that effect in Kenya. The basis of the President's position and with him that of the Government, which could have been eroded by members of his party crossing the floor, was reinforced by a provision requiring the members of his party who cross the floor to seek re-election to parliament. According to the Attorney-General, this has had the "effect of reducing substantially the parliamentary strength of the Kenya People's Union Opposition Party. . . ."² If the two party system is tolerated in Kenya, the presence of a hostile opposition could mobilise the government party in parliament behind the President, thus giving poignancy to the preferential election system.

1. Report of the Presidential Commission on the Establishment of a Democratic One Party State, 1965. Dar-es-Salaam, p. 23.

2. C. Njonjo, op.cit.

(d) Plebiscitary Election - U.A.R. In the U.A.R. the Constitution provides for the election of the President in a manner which is unique. The National Assembly nominates the presidential candidate and the nomination is then referred to the people for a plebiscite. One nomination at the National Assembly is made upon the proposal of at least one third of its members. The candidate who wins two-thirds of the votes of the Assembly members is then referred for a plebiscite. If no one obtains the required majority the nomination is repeated two days after the first vote, with the same requirements of a two-thirds majority. At the plebiscite the candidate is considered elected if he obtains an absolute majority of the votes cast. If he fails to obtain an absolute majority, the National Assembly nominates another candidate and the same procedure is repeated (art. 102).

The procedure for the choice of a new President begins sixty days before expiry of the President's term of office; the election must take place at least one week before the expiry of the term. Should this term expire before a new President is elected for any reason, the former President continues in office until his successor is elected.

The origin of the plebiscite as an electoral concept is connected with the history of the successful transformation of power gained by military means into legitimate political

authority. The first time it appeared as such in modern times was in 1852 when it was applied to the ratification of the coup d'etat of December 1851 and conferring the Imperial Crown on Napoleon III. But the plebiscitary method used in the U.A.R. as an electoral machinery, after the fait accompli of a revolution has certain marks of novelty. The most important one is that a popularly elected legislature nominates a candidate who is then chosen by the people on a uninominal list.

C. Tenure of Office

The duration of the term of office is long enough to ensure the implementation of policies begun, provided they are diligently applied. The duration in some cases is very long. It is seven years in Gabon, Guinea and Madagascar; four years in Rwanda and Senegal, and six years in the U.A.R. In all the rest it is five years. The President is eligible for re-election in all cases. In Togo he ~~was~~ is eligible for re-election only once, and Rwanda and Tunisia twice.

The absence of restriction on the right of re-election reveals the need and the desire for leaders with experience and prestige to continue to serve their nations. The first Presidents possessed such qualities when they first assumed office, having ridden on the crest of movements for independence which, in most cases, they helped to start. The risks of personal

dictatorship are, however, not unlikely, if not inevitable.

Normally the President continues in office until the end of his term. In classical presidencies the fixed term of office cannot be ended unless the President is successfully impeached or some natural process intervenes to put an end to it - death, or incapacity through serious physical or mental illness. In a number of African states, the President's office may be terminated through the active agency of the Assembly, or he may himself dissolve parliament and thus¹ bring an end to his own term.

(i) Vacancy in the Office of President

Vacancy may result from temporary or permanent absence or disability, resignation or death, however caused. Such eventualities are naturally provided for in the Constitutions of Africa. In case of vacancy caused by illness a successor is elected according to a variety of procedures. There is the case where the President himself is required to appoint someone to replace him temporarily for the duration of a temporary disability. If he fails to make such an appointment the President of the National Assembly replaces him automatically. Such is the case, for example, in Senegal, where the President of the National Assembly also assumes the office of President in the event of vacancy caused by permanent disability, death or

1. Dissolution will be treated in a different section. See pp. 279-84, *infra*.

resignation of the President. The replacement lasts until a new President is elected, which takes place within sixty days after the vacancy has occurred; or if the vacancy occurred less than six months before the end of the term of office the election of a new President takes place within that remaining period. As for its certification, the Supreme Court is empowered to examine the cause of the disability and the National Assembly must then vote on the matter by a two-thirds¹ majority.

In the Congo (Brazzaville) a similar procedure is adopted. In case of vacancy for any cause certified by the Supreme Court the President of the National Assembly replaces the President until a new one is elected within twenty to fifty days after the vacancy occurred (art. 25).

A different variety exists in other states such as the Ivory Coast and Niger. There, in case of permanent disability - death or resignation of the President - the President of the National Assembly appoints a member of the National Assembly for the interim. If the remaining term is less than twelve months, the person so appointed discharges the functions of the President with all the rank, powers and prerogatives attached thereto for the duration of the remaining period. If the remaining term is more than twelve months a new election must be held. The term of office of

1. Senegal Const. arts. 26, 33-35.

the new President ends together with that of the
¹
 National Assembly.

It will be seen that the position of the President of the National Assembly in these types of cases is of crucial importance, with potential authority that could be actualised in the event of sudden vacancy of the President's office. The President of the National Assembly is invariably a man of prestige and political weight. Lamine Guyé of Senegal, to name but one, is a typical example. Constitutional provisions which make it possible for the President of the National Assembly, in case of disability, to replace the President, ~~are~~ a measure of recognition of this fact.

In Tchad and Tunisia, by contrast, the Council of Ministers are given the power to appoint a successor temporarily (in the case of Tchad) and in all cases of vacancy (in Tunisia). In Tchad permanent disability determined by a two-thirds majority of the members of the National Assembly and confirmed by the Supreme Court results in the election of a new President (art. 9). It is not remarkable that this should be so in Tchad, where the election of the President is indirect in the first place. But in Tunisia it seems to be out of tune with the principle of direct popular mandate that the Council of Ministers should exercise the power to appoint a successor in all cases of vacancy. It is convenient of course

1. Const. Ivory Coast, art 11; Niger, art. 11.

and saves election expenses; but it could conceivably prove to be too convenient and in the long run more costly.

Guinea presents a contrast to all this. If a vacancy occurs in Guinea an election for a new President must be held immediately. The Cabinet remains only to expedite outstanding matters (art. 28).

Mali is a notable exception in the matter of succession to vacancy, in that the Constitution does not make any provision in that respect. This silence of the Constitution has left a lacuna which makes the position of the President of the National Assembly of potential importance. The President of the National Assembly is an ex officio member of the Bureau politique of the party, which in Mali is a supreme body.¹

In the states whose constitutions provide for the existence of a Vice-President, succession to a vacancy is a simpler and more automatic affair. These are: Cameroun, Gabon, Kenya, Madagascar, Tanzania, U.A.R., and Zambia. The Vice-President in Cameroun is elected on the same list as the President, and for the same term.² In Gabon there are more than one Vice-Presidents, called Vice-Presidents of the Government, who are appointed by the President (art.8). The

1. cf. Chapter Six below. The title "president du gouvernement" is indicating less emphasis on presidentialism.

2. Const. Cameroun, art. 10; In Togo also the same was the case, cf. art. 22.

President also appoints the Vice-President in Kenya, Madagascar, Rwanda, Tanzania and the U.A.R., subject to the approval of the National Assembly in the case of Rwanda.¹ In Tanzania and the U.A.R. more than one Vice-President are appointed, one of them being designated First Vice-President.

The Vice-Presidents assist the Presidents in most cases by exercising power delegated to them by the Presidents. Succession takes place in case of vacancy for whatever cause until a new President is elected. Again the certifying authority is either the Supreme Court (e.g. Gabon) or the National Assembly (e.g. U.A.R.).²

The presence of Vice-Presidents in Executive Presidencies may appear paradoxical. In some cases, as for example, in Gabon and Togo, the office was created to accommodate certain personalities.³ In other cases, such as Cameroun, territorial readjustment resulting from the federation necessitated some institutional re-arrangement, thus creating the office of Vice-President to accommodate the leader of one of the federated units. Not infrequently, tension between the two offices may build up, owing to different political views or different backgrounds. A good example of such tension and its build-up to crisis point was

1. Const. Rwanda, art. 52.

2. Thus in case of unfitness of the president, the Cabinet may pass a resolution asking the Chief Justice to inquire into the matter; the latter may appoint a medical tribunal for that purpose (cf. Cons. of Kenya (Amendment) Act sect. 33.E.

3. cf. Lavroff and Peiser, op.cit., Vol. I, p.25.

found in Togo.¹

However, in most cases appointments to the Vice-Presidency are made from among loyal colleagues. The U.A.R. is a notable example of this. The bold social and economic experiment launched by President Nasser and his team requires continuity of application. The history of conspiracy to assassinate the President has provided additional impetus to put in line for succession the closest colleagues who share the President's policy. The former First Vice-President, Marshall Abdel Hakim Amer, was President Nasser's closest friend and erstwhile comrade-at-arms as a "Free Officer."² Needless to say, the concentration of power in the President creates risks, not the least of which

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1. Ex President Grunitsky and Vice-President Meatchi were leaders of different political focuses and at the time of Olympio's death living in exile (in Dahomey and Ghana respectively). On Olympio's death they returned to form the present government. On November 21st, 1966, while the President was in France undergoing medical treatment, a crisis occurred which nearly ended in a disaster. This basically concerned Vice-President Meatchi and another personality (the Minister of Interior) who had accused Meatchi of having instigated anti-Grunitsky tracts to appear in Lome. Meatchi denied this and, as acting President, threatened to dismiss the Minister of Interior. It is believed that behind this flare-up lay the basic tension of the Grunitsky Government. It contributed to the coup. cf. West Africa, December 3rd, 1966.
 2. The line-up in the succession has now changed radically after the recent war with Israel and the resignation of Marshal Amer.

is risk to life and health. The potential role of the Vice-President therefore cannot be ignored.

(ii) Removal of the President from Office

Provisions are made for the removal of the President from his office for violation of the law or the Constitution. The type of violation or misconduct for which a President may be removed is not defined. The procedure for investigating such violation or misconduct and for fixing responsibility follows a similar pattern in all states. In the franco-¹phonic states only the National Assembly has the right to initiate the process. Again, in nearly all these states, the High Court of Justice is empowered to try the President for high treason committed in the exercise of his function. The High Court of Justice trying the President is composed of deputies elected by the National Assembly at the beginning of a new parliament. The Court elects its own President.

In Rwanda the Supreme Court has the exclusive jurisdiction to try the President for high treason. In Madagascar the Court of Appeal is composed of the first President of the Court of Appeal (presiding) and two other members of that Court, and eight members of parliament.

1. The Senegal Constitution requires a three-fifths majority, (see art. 87); that of Rwanda requires three-fourths majority, (see art. 101 (c)).

In nearly all cases it is provided that the tribunal trying the President is to be guided by the law relating to crimes, and the penalties specified therein shall apply.¹

Another type of procedure is provided for in most Anglophonic states. For example in Zambia if a written notice is given by one-third of the members of the National Assembly alleging that the President has committed a violation of the Constitution or gross mis-conduct; and if the National Assembly, by a two-thirds majority vote, supports this allegation, the Chief Justice appoints a tribunal to investigate and report on the matter. The members of the tribunal are selected by the Chief Justice and they consist of a Chairman and not less than two other persons who hold or have held high judicial office. They report to the National Assembly. If the report supports the allegation and the National Assembly resolves by a three-fourths majority that the President is guilty as alleged, the President ceases to hold office, as and when that body so resolves.²

A similar procedure is followed in the U.A.R. except that a special tribunal tries the President and there is no

1. For the relevant articles on the foregoing cf. Constl Cameroun, art. 36; Congo (B) arts. 75, 77; Ivory Coast, art. 14; Gabon, arts. 62-3; as amended by Loi No. 23/63; Madagascar, art. 18; Mali art. 46-7; Mauritania, art. 52; Niger, arts. 63-4; Senegal, arts. 86-7; Rwanda, art. 101 (c); Tchad, arts. 76-8.

2. cf. e.g. art. 36, Const. of Zambia.

provision requiring an investigating tribunal to be set up¹ and to study and report on the allegation.

The President enjoys immunity against legal proceedings, for acts criminal or civil, committed in the exercise of his functions.² In the constitution of francophonic states, with the exception of Rwanda, there is no express provision on such immunity. However, since liability to criminal prosecution is limited to high treason, it may be safely presumed that there is immunity against any other legal proceedings.

The provisions on the removal of the President acquire special significance, particularly in view of the advent of an "irresponsible" Executive. Where a President is not subject to the traditional parliamentary pressures such as motions of censure, or is not made answerable on any other public platform, impeachment becomes all the more important. A resort to impeachment would however seem to be highly improbable in the context of the one-party state.³ This would inevitably build up resentment and like all situations where power is "closed" would, at critical moments, lead to explosion. It may be recalled that in some countries ministerial responsibility originally started in, and was

1. cf. art. 112.

2. Art. 43, Const. Zambia.

3. cf. Chapter Six.

limited to, criminal matters, at a time when Ministers sheltered behind royal prerogatives. A wise President would not allow the slow build up of presidential prerogatives to shelter malefactors, for that would prove to be his undoing and that of the regime.

D. Powers of the President

Introductory

As we have already indicated, the new African states were launched upon independence with metropolitan style constitutions. But the leaders of the new states were not satisfied with what they inherited or adopted. From the end of 1960 to the beginning of 1962 thirteen states had in rapid succession ~~had~~ either new constitutions drawn up or the first ones revised. Others followed suit to change their Independence Constitutions. The change in all cases is marked by the reinforced position of the President. Common historical ties and new associations created the conditions for uniformity of approach and mutual influence. New ideas and attitudes emerging from the experience under independence, and in some cases old ones which had been suppressed for tactical reasons, now persisted in seeking institutional expression. The trend was a movement from

traditional parliamentarism to a new form of presidentialism.¹

Implicit in this movement towards a reinforced presidentialism, there is a desire for economic and social change. As a corollary to this there is also the will to national unity. The source of the will for change lies in the challenge of two related facts: the impact of the modern industrialised world, and the staggering fact of underdevelopment in the new states made the more urgent by incessant demands for improvement. Social and economic change through education and technological advance is seen as a condition for progress, and even for survival. The source of the will to unity lies in the diversity of social and political life and the threat to security posed by ethnocentrifugal tendencies. In a number of states the leaders may be called leaders more of states than of nations. Unlike in Europe, for example, the institutions of the new states are therefore designed to perform, among other things, the function of creating or cementing new nations.

All this called for discipline - discipline in the individual as in the public life. The instruments chosen to instil, development, maintain this spirit of discipline and to carry out the underlying policy are the President and the Party, of which he is Head. But while the reinforced

1. This term conveys the centrifugal tendency of ethnic groups.

position of the President is formally expressed in the constitutional framework the Party, in nearly all cases, is left to operate extra-constitutionally.

The Government itself issues out of the Party, which is used as a medium of communication to reach down to the roots of society.

It was argued that the whole policy depended for its success on a strong government, with clear programmes and an assurance of a reasonably long term of office to carry out the programmes. Such, in outline, is the argument for the new type of Executive Presidency, and the one-party state stems from it, resulting in the abolition of organised¹ opposition in most states.

The new African constitutions are then characterised by enhanced presidential power. The President combines the powers of Head of State and Chief Executive. This is so whether the executive is bicephalous (dual) as in the U.A.R. or monocephalous (unitary).~~xx in all the rest~~ In both types extensive powers are conferred on the President. He represents the state in all public acts and generally exercises powers traditionally associated with a Head of State. At the same time he exercises a variety of important executive powers, and powers in relation to the legislature, some of which bear marks of novelty. The President's power may be divided into two: normal and exceptional.

1. The *raison d'être* of the one-party system on which executive presidency depends, will be examined in Chapter Six.

(1) Normal Powers

The power of the President exercised in normal times may be subdivided into three categories: power in relation to the Government; power in relation to the Legislature; and power in relation to the Judiciary.

(i) Power in relation to the Government

The President's power under this category is sometimes termed Executive power. The majority of the new constitutions provide that Executive power is vested in the President, that he is the sole holder of power of this nature, and that he may exercise it directly or indirectly through officers subordinate to him. This principle of course stems from the underlying policy outlined in the introductory part of this section.¹ Or the Executive power may be vested, as in Zambia, in the President who exercises it independently, subject to the proviso that parliament can confer executive functions to persons or authorities other than the President.²

(a) Policy-making power. From the principle of what might be called the "exclusive executive power" flows logically the provision that the President shall be the principal

1. Exceptionally, however, the President has been explicitly required to share Executive power with members of the Government. cf. e.g. art. 20 Cons. of Togo which was in force before the military coup.

2. Const. Zambia, art. 48 (1-3).

policy-making authority, and the new constitutions so provide.¹
 But in a few states this power is conferred on the cabinet.
 Also, in the U.A.R. the President shares with the government
 the function of laying down "the general policy of the State
 in all political, economic, social and administrative domains"²
 and in the supervision of its implementation.² In all the
 rest it is provided with variation in wording but with the
 same effect that the task of drawing up policy and of defining
 and promoting general programmes of action belongs to the
 President. It need hardly be said that in these systems the
 government, which is the President's government, must have a
 substantial share in this task. Indeed, it is significant
 that the constitution of the U.A.R. should be an exception
 in entrenching the principle of group decision, in an express
 provision in view of the military origin of President Nasser's
 power-base.³

(b) Administrative power. Having conceived and drawn up
 policy the President must next have it implemented in pro-
 grammed action. The two stages do in fact form inseparable

1. e.g. Const. Congo (Brazzaville), art. 39; Madagascar, arts.
 11 and 12; and Loi du 28 Juin 1961 and 6 Juin 1962.

2. U.A.R. Const. art. 113.

3. It would of course be argued that the psychology and prac-
 tice of "staff work" in the military facilitates rather
 than hinders group decision, and that this strengthens the
 position of the President.

links in the same process of government. In order to give a constitutional basis to this matter it is invariably provided that the President shall have the general direction and control of the government.

In the classic cabinet government, the cabinet is the core of the system. As Jennings has written about the cabinet in Britain:

"It is the supreme directing authority. It integrates what would otherwise be a heterogeneous collection of authorities exercising a vast variety of functions." ¹

In the presidential systems under consideration here, the President and not the cabinet is the supreme directing authority. The cabinet is his principal organ of co-ordination through which he discharges his functions of directing and supervising the work of government. But he, and not the cabinet, provides the unity to the system of government. In most cases he presides over the cabinet. This fact, in addition to the shift of ministerial responsibility from other institutions to the President, lends practical reality to the pre-eminent position of the President.

Apart from presiding over the cabinet the President can also exercise direction and control through the fact that individual ministerial responsibility is owed to him. There is nothing new in individual contact with the work of each

1. Cabinet Government, 3rd ed., p. 1.

minister. A prime minister in traditional cabinet systems can deal with each one of his colleagues. But whereas in that case his power of co-ordination of the machinery of government is subject to the control of the cabinet,¹ in African neo-presidentialism such restriction is rare. In this connection constitutional provisions are generally made conferring on the President regulatory powers, and power to assure the execution of laws and judicial decisions, and power to sign ordinances and decrees.² The regulatory power may be exercised by presidential order or decree normally given under his sole authority. Exceptions to this, where it is given in Council, are Congo (Brazzaville),³ and Ivory Coast.⁴ Some of the constitutions require the presidential acts to be countersigned by the Minister in charge of the matter.⁵ In some states, for example the Ivory Coast, regulatory ordinances and decrees may be examined by the Supreme Court before they are submitted to the Council of Ministers.

1. cf. Jennings, op.cit., p. 1.

2. e.g. Const. of Cameroun, art. 12; Ivory Coast, art.15; Gabon, art. 13; Madagascar, art. 11; Mali, art. 11; Guinea, art. 25; Mauritania, art. 18; Senegal, art. 37; Tchad, art. 26; Congo (B), art. 29.

3. Const. arts. 29, 22 respectively.

4. Congo (B), art. 38; Gabon, art. 21; Guinea, art. 26; Madagascar, art. 17; Mali, art. 12; Mauritania, art. 19; Tchad, art. 6.

5. Const. Ivory Coast, art. 23.

The exercise of executive power cannot, by its nature and purpose, be limited to the President. In practice the President delegates his powers to ministers, even where there is no law requiring him to do so. Such delegation which can be revoked at any time is usually signified by an instrument under the hand of the President, or in matters of temporary duration orally.¹

(c) Power of appointment. Executive authority manifests itself more dramatically in the power of appointment. In all the states under study the President is given extensive powers of appointment. He appoints the members of the government who are responsible to him, and he determines their powers. With the power of appointment goes the power of dismissal, transfer and reshuffle; and determination of ministerial powers includes the distribution of the portfolios. The totality of these powers place in the hands of the President political instruments necessary for him to maintain his position and to carry out his duties by putting the right man in the right job.

Ministers and Deputy Ministers. Key-posts which would often require loyalty to the President, apart from ability, are Defence, Interior, Finance, ^{and} External Affairs. Sometimes

1. Information based on oral interviews with officials of some African governments. Where such delegation occurs, however, the Minister is required to affix to the document, the presidential seal or the public seal.

1

Justice and Economic Planning are considered key posts.

The President also makes all military and (in most cases) civil appointments. This is linked with his position as the Head of the Administration which he establishes, organises and directs; and with his position as Commander-in-Chief² of the armed forces. Mali marks an exception in this respect, in that the President makes civil and military appointments³ "en conseil des ministres". It must also be noted that the Prime Minister in the Congo (B) appoints civil and military⁴ officers by delegation of authority. Also some constitutions contain provisions requiring the Council of Ministers to⁵ decide on appointments "to higher posts of the State".

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1. On appointment of members of the Government, see Consts.: Cameroun, art. 11; Congo (B), art. 27; Gabon, art. 21; Guinea, art. 23; Liberia, art. 3, sect. 5; Mali, arts. 8, 11; Ivory Coast, art. 12; Mauritania, art. 17; Rwanda, art. 10; Tunisia, art. 43; U.A.R., art. 114; Zambia, art. 44(2); Tchad, art. 8; Kenya, sect. 77 Constitution of Kenya (Amendment) Act, 1964. The need of giving key portfolios to trusted colleagues (especially Defence and Interior) is understandable in view of the threat of temptations to use unconstitutional means to remove the President and his government, which is borne out by the many coups d'etat, as we shall see in later chapters.
 2. Const. Cameroun, art. 12; Ivory Coast, arts. 17-8; Gabon, art. 20; Madagascar, arts. 11-2; Mauritania, arts. 18, 20; Senegal, art. 38; Tchad, art. 12; Rwanda, art. 56 (8); Congo (B), art. 28; Tanzania, art. 21; Tunisia, arts. 45-6; U.A.R., arts. 123, 128; Zambia, arts. 49 and 115; Malawi, arts. 48 and 87.
 3. Const. art. 9, para. 5.
 4. Const., art. 40. i.e. by authority delegated to him from the President.
 5. Ivory Coast, Const. art. 22; Tchad, art. 10.

The presidential function as Commander-in-Chief of the armed forces implies an important controlling power including operational control. It also includes the control of the term of service through his powers of appointment and dismissal. The dynamics of presidential power would obviously involve special relation with people who man the armed (and security) services, particularly in view of the shadow of the coup d'etat. The president's powers are thus enhanced by the institutional devices which can be used at his discretion to ensure the security of the state.

(d) Diplomatic powers. The President appoints ambassadors to foreign states and ambassadors from foreign states are accredited to him. He negotiates, signs and ratifies treaties and international agreements, within certain limits. In the majority of the states the limits are set out in the constitutions. The approval of parliament is required for signing peace treaties, treaties of commerce, treaties of agreements concerning international organization, treaties which commit the finances of the state; or which modify the provisions of a legislative nature; or which concern the status of persons; or which involve cession, exchange or addition of territory. Moreover, no cession, exchange or addition of territory is valid unless approved by the population concerned. The Supreme Court has power to examine international obli-

gations; and if it declares any of them as contrary to the constitution, it can be ratified or approved only after a constitutional amendment.¹

The Constitution of Cameroun disposes of the matter by providing that treaties which belong to the "domain of law", must be submitted to the National Assembly for ratification.²

In Tunisia, all treaties and international agreements without exception must be submitted for the approval of the National Assembly.

(ii) Power in relation to the Legislature

The increased power of the President in the new states is not limited to the Executive sphere. In most of the constitutions the legislative role of the President is enhanced and its scope extended far beyond the traditional position. To begin with, while it is provided that laws are voted by parliament, the "domain of law" is enumerated in most cases. This is the case with nearly all the franco-

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1. Const. Gabon, art. 52; Guinea, art. 33; Congo (B) art. 60; Ivory Coast, arts. 53-5; Mali, arts. 38-9; Mauritania, arts. 44-5; Niger, arts. 53-5; Rwanda, art. 56(h); (i), (j); Senegal, arts. 76-9; Tchad, arts. 69-71; U.A.R., arts. 124-5.
 2. Art. 12. The "domain of law" is exhaustively defined in the constitution. This detailed provision in the domain of law is a feature of French constitutional law adopted by all francophone African states. Among other things a state of urgency (Etat d'Urgence) is part of the domain of law.

phonic states, following in the footsteps of France. What is not covered by the "domain of law" enumerated in the constitution is left to the "regulatory" power of the President - another significant inroad into parliament's legislative function. A decrease in the legislative power of parliament has thus meant a proportionate increase in that of the Executive. Indeed some Constitutions, such as those of Rwanda and Zambia, vest legislative power in the President and the National Assembly.¹

In the case of Zambia, such power is vested in the President by virtue of the fact that parliament consists of the President and of the National Assembly.² This provision no doubt owes its source to the Republican Constitution of Ghana of 1960, which with the abolition of the monarchical parliament (Queen and Parliament) substituted the President for the Queen in making parliament consist of President and National Assembly.³

1. Rwanda, art. 73; Zambia, art. 57.

2. Art. 57.

3. The Zambian and Tanzanian presidents also appoint a limited number of members of the National Assembly. This device enables the President to ensure the presence in parliament of people representative of special professional or other groups. Nor is it purely representational in purpose, it is partly designed to ensure the presence of people with special experience and expertise, or some other quality.

Moreover, several constitutions provide that the President may ask the National Assembly to authorise him for a limited period to pass decrees or ordinances for the execution of his programme in matters falling within the domain of law. In the event that such authorisation is given, however, the decrees or ordinances cease to have force and effect, if they are not submitted for parliamentary approval before the time limit fixed by the enabling law.¹ Also under the U.A.R. Constitution, where no "domain of law" is enumerated, the President is given power to issue "decisions having the force of law."²

We must now examine some other areas where specific legislative function is given to the President. They consist in the right to initiate legislation, to give assent to and promulgate laws, to address parliament, to dissolve parliament and to legislate by referendum.

(a) Legislative initiative. This is a very important power which the President enjoys concurrently with the deputies. It is of crucial importance in the choice and elaboration of projects to be passed as law. This is, to be sure, a feature of all modern legislative practices. But in the African Constitutions it has acquired a different magnitude: the

1. cf. e.g. Const. Ivory Coast, art. 45; Mali, art. 28; Mauritania, art. 36; Senegal, art. 66; Niger, art. 45; Rwanda, art. 55. For example the Senegalese Parliament passed Loi No. 60-046 of Sept. 1960 for this purpose.

2. Art. 120.

President is placed in a better position by comparison to the President of the U.S.A., for example, who can only resort to indirect methods to participate in the elaboration of the laws.¹ The Constitution of Senegal contains a unique provision in this respect: article 56, having enumerated the subjects falling within the domain of law, provides that the President can "by reason of their social, economic and financial importance, submit to the vote of the National Assembly draft laws having to do with matters other than those enumerated in the present article" without derogating from the power of the President.

²
(b) Assent to Bills and Promulgation. It will be seen that this right to send Bills for second deliberation does not amount to complete veto. But the delays which it could entail, plus the influence which the President wields in the National Assembly of these new states could turn it into a weapon of no mean importance. The period of delay is further extended in some cases, as for example in the Ivory Coast, Niger and Tchad, by a provision which gives the President a

1. cf. e.g. Const. Cameroun, art. 23; Gabon, art. 22; Guinea, art.14; Mali, art.11; Mauritania, art.37; Rwanda, art. 56(j); Niger, art.13; Senegal, art.69; Tchad, art.33; Tunisia, art.28; U.A.R., art.116. In anglophonic states there is executive initiative of legislation in practice, although there is an absence of express provision to that effect.

2. cf. Consts. Cameroun, art.18; Ivory Coast, art.13; Gabon, art.12; Mauritania, art.41; Madagascar, art. 13; Mali, art.10; Rwanda, art.56(k); Congo (B), art.30; Zambia, art. 71 (317); Tchad, art.55; Senegal, art.62; Tunisia, art. 44; U.A.R., art. 118.

right to request that the second deliberation should take place during the session after the one at which the Bill was first adopted. Again, this request cannot be refused.

(c) Right to Address Parliament. Allied with legislative initiative, assent to and promulgation of Bills, is the right to address messages to parliament, directly or through an intermediary. Of primary importance among such messages is the annual address given by the President at the opening (and sometimes at the closing) of parliament. This is of course a traditional right in many countries, for heads of states. But it has acquired a special quality in the new constitutions of Africa. Through it the policy-making powers of the President can be brought to bear on the work of parliament. The President can determine in advance the issues which are to be debated in parliament by presenting the outline of the government's legislative programme. He may make this programme the more imperative by laying due stress on certain subjects in a descending order of importance. This he can do as a Head of State and a repository of the national interest. A report on the state of the nation and a programme of action with an array of plans and projects designed to solve problems and to implement policies cannot fail to set the tone and pace of parliamentary activity. The right of address is contributory to the creation of such a state of affairs. It is indeed linked with and is a vehicle of the

right to legislative initiative. That it is a right with a new quality can be seen in the fact that unlike the Queen's speech in the U.K. parliament, for instance, the President's address is not subject to debate or question.¹

The opening and closing of ordinary sessions of a parliament are fixed in most cases, but the President has the right to open and close extra-ordinary sessions. This is subject to a time limit (usually a maximum of thirty days) imposed on the duration of extra-ordinary sessions.

(d) Dissolution of the National Assembly. The desire to establish and assert Executive supremacy over the legislature is perhaps best expressed in the right of the President a) to dissolve the National Assembly, and b) to go over the head of that body, having resort to referendum - both rights recognised in the constitutions of several African states. We shall examine first the President's power of dissolution.

A number of African constitutions make provision for the dissolution of parliament.² Two (Gabon and Zambia) do not fix conditions on the exercise of the right of dissolution - Article 83 (2) of the Zambian Constitution simply provides: "Subject to the provisions of the Constitution, the President

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1. The right of the President to attend and address the National Assembly is exemplified by article 75 (1) of the Zambian Constitution.
 2. e.g. Congo (B), art. 32; Gabon, art.17; Madagascar, art.45; Malawi art. 45(2); Mali, art.37; Rwanda, art.97; Tchad, arts. 45, 47; Zambia, art. 83.

may at any time dissolve parliament". Such provision first appeared in the Republican Constitution of Ghana of 1960. Under that Constitution the President's own office fell open to re-election if he dissolved parliament. Similarly, the Constitution of Zambia provides that whenever parliament is dissolved an election shall be held for the office of the President.¹ The provisions of Article 33(1) and Article 83(2) taken together mean that what appears to be an unlimited power of the President to dissolve parliament is counter-balanced by the President's necessity for re-election which is consequential on the act of dissolution. In practice such an extreme measure would only be taken in case of serious differences arising between the President and the National Assembly leading to a deadlock. This can conceivably arise, among others, from a refusal of the President to assent to Bills passed by parliament after a second deliberation by a two-thirds majority.

In Gabon, the President may dissolve the National Assembly "in case of necessity", and after consulting the Council of Ministers and the President of the National Assembly. He is not bound by the opinion of anyone. He has also the right to prorogue the National Assembly once, for a maximum period of eighteen months.² But dissolution of

1. Art.33(1). cf. also Malawi Cons. which provides "The President may at any time dissolve parliament", art.45(2).

2. Art. 17.

parliament does not entail the resignation of the president.

As for the other states (all francophonic) the circumstances under which the President can dissolve the National Assembly are explicitly stated in the case of four, Congo (B), Madagascar, Rwanda and Tchad. There must be ministerial crises resulting from the passing of a motion of censure or the defeat of a vote of confidence. In Mali the relevant provision refers to ministerial crises without stating the cause. Before dissolution can take place, two ministerial crises must occur in the course of 18 months in the Congo (B), and more than two crises in the course of three consecutive years in Rwanda. In Tchad a motion of censure or a defeat of a vote of confidence occurring once is sufficient.¹

Dissolution of the National Assembly automatically results in the termination of the President's office in Rwanda as it does in Zambia. In Madagascar a two-stage procedure is devised as a condition for dissolution and resignation. In the first place, the President may pledge the responsibility of his government on the strength of a programme embodying general policy. If the National Assembly rejects this programme or adopts a motion of censure the Ministers must submit

1. In Togo, the provision was that after such a crisis, the President had the option of altering the composition of his government, or of changing it completely or of dissolving the National Assembly. In Tchad, a majority of two-thirds is required.

their resignation to the President. The second stage begins at this point. The President, after consultation with the President of the Senate, may form a new government and present a new programme to the National Assembly. If the National Assembly rejects the new programme it is automatically dissolved and elections for a new National Assembly are held. If, after the election, the new National Assembly does not accept the programme last rejected, the President must resign and with him the Council of Ministers, and an election for a new President is held.

This two-stage procedure with its "shifts" of electoral hazards is a unique device of mutual restraint and persuasion between the President and the National Assembly, involving as it does, the fate of both. Still, the President has an advantage over the Assembly in that the latter goes out first to face the hazards.

In Mali and Tchad (as in Gabon) dissolution of the National Assembly does not involve the resignation of the President or his government. It is also interesting to note that in Tchad, upon the dissolution of the National Assembly, the President of that body automatically becomes a Ministre d'Etat, which is revealing as to the nature of his position in the Legislature-Executive nexus.

It will be seen that the constitutional position of the

President in Africa in relation to parliament as regards dissolution is marked by a variety of forms. While some constitutions are silent on the matter, others have a variety of arrangements in which the President of Gabon stands in the strongest position, followed by those of Zambia, Tchad and Mali, and perhaps Madagascar.

This lack of uniformity is understandable; it reflects some variation in historical and political backgrounds. The subject of dissolution touches on a sensitive area of political life. No Assembly likes to resolve itself out of existence in normal circumstances. The same may be said of Presidents. In classical Presidential systems, as that of the U.S.A., the tenure of office of President and members of Congress is fixed. In case of deadlock they have to wait to the end of the term. Even in case of hostility, however, the Congress recognises that government has to go on. The African states that have adopted dissolution as a way out of deadlock could not fail to recognise that government has to go on. If a recalcitrant parliament and an obdurate President persist in hostility, government will break down, and dissolution would then be a sensible, if not the only, way out.¹ Otherwise, it may be safely concluded that resort to dissolution would be rare.

If the experience of the British parliament is any guide,

1. The events in the Congo in late 1965 demonstrated that this is a fertile ground for military coups.

decisions by the Prime Minister to "advise" dissolution are rare, centering on crucial events, in circumstances of national division over important issues. The Prime Minister who advises dissolution must nevertheless be presumed to choose a most suitable moment. He does this with the hope¹ of his government's re-election.

(e) Referendum. The most important legislative power of the President in the new states is perhaps found in the right to resort to referendum. This is also a dramatic method of overcoming parliamentary opposition to legislative programmes of great public importance.

Referendum as a political concept of resolving outstanding political issues by referring them to the populace has a long history. Referendum as a legislative concept to be used by the Executive branch of government to side-track opposition is of recent origin. In its modern context it has a wider scope of meaning and application. Its advent in Africa is post-Gaullist (1958), and Gaullism was its principal source of inspiration. But in its most extreme form it has moved a stage further than under the Constitution of the Fifth Republic. Under that Constitution the initiative to use referendum does not belong to the President. It is decided by the President upon proposals made by the government during the session, or upon the joint proposal of the

1. On the dissolutions of 1918, 1931, cf. F.W.G. Benamy, 'The Elected Monarch', (London 1965), pp.47-57.

two Assemblies. Also, the subjects which may be settled by resort to referendum are limited to three categories: 1) Bills involving the organisation of public powers; 2) Bills involving the approval of an agreement of the "communauté", and 3) Bills authorising the ratification of a treaty, "qui sans être contraire à la constitution aurait des incidences sur le fonctionnement des institutions".¹

In Africa the referendum has been adopted by the constitutions of a number of the states.² The francophonic states used the French constitution as a model for this, as in many other questions. However, only Madagascar has followed the French Constitution in ~~making~~ initiative out of the hands of the President. In fact, in Madagascar, only the National Assembly and the Senate can make the proposal for a referendum, voting separately by an absolute majority of their respective members.³

In four of the other states, i.e. Gabon, Ivory Coast, Niger and Senegal, the President may submit all questions which appear to him to require the direct consultation of the people. He may do this after consultation with the bureau of the National Assembly,⁴ or with the Council of Ministers and

1. Art. 11.

2. Though not in Cameroun, Mali, the former British territories and Tunisia.

3. Art. 34, paragraph 4.

4. Ivory Coast and Niger, Cons. arts. 14.

the bureau of the National Assembly;¹ or with the Presidents² of the Supreme Court and the National Assembly; in all these four states the consultation is of^{an}/advisory nature, and there is no limit on the matters that may be subject to referendum.

In Mauritania, no consultation is required of the President, but the referendum is limited to two matters:

- 1) Bills involving the organisation of Public Powers, and³
- 2) Bills authorising the ratification of a treaty.

In the Congo (B), and in Tchad the President may submit any subject to a referendum without the requirement to consult⁴ any person or body. It is also interesting to note that the relevant provision in the Tchad Constitution adds that "all law contrary to the will of the people expressed⁵ by way of referendum is automatically void".

In Rwanda presidential power over referendum as a legislative instrument is non-existent. Referendum is used to settle institutional disputes between the Executive and the Legislature in matters not provided for in the Constitution, after the question has~~S~~ been submitted for a consultative

1. Gabon, Cons. art. 16.

2. Senegal, Cons. art. 46.

3. Art. 41.

4. Cons. Congo art. 33; Tchad, art. 11.

5. Art. 11, para. 3.

opinion of the Supreme Court and if the dispute cannot be settled thereby.¹ The novelty of this interesting provision lies in bringing the people to participate in settling institutional disputes between the Executive and the Legislature. The Rwanda Constitution^{*} is a fairly exhaustive one, however, and a constitutional crisis arising out of matters unforeseen by it would be most unusual.

In the U.A.R. the President may call a referendum "in important matters affecting the supreme interests of the country."²

In anglophonic Africa the referendum was adopted in Ghana, presumably by way of Nkrumah's contact with some of the francophonic states. The Constitution provided that a referendum (for a repeal of an entrenched provision of the constitution) would be ordered by the President. But as Rubin and Murray pointed out, there was no provision on the means by which the people were required to indicate their desire for such a referendum "which left the President with an absolute discretion to decide whether the referendum should take place".³ Indeed the institution of the referendum, while on the face of it democratic, could be used to defeat

1. Art. 72.

2. Art. 129.

3. cf. Rubin and Murray, 'The Constitution and Government of Ghana' (2nd ed. 1964), pp. 97-8.

democratic ends. The complexity of the issues on which the public are asked to pass judgments in a "yes-or-no" fashion justify a doubt to be expressed on its merit. Presidential regimes by their very nature tend to focus attention on the President and away from parliament as a centre of power, including legislative power. Charismatic leaders can conceivably get the public to accept most of what they wish. This is the logic of the system, and its dependence on a mass-based party underlines the dangers.

(iii) Power in relation to the Judiciary

Where the President is engaged in the exercise of power in relation to the judiciary, three types of situations may be involved. First, there is the power of appointment to judicial posts; second, there is the right of the President to ask for judicial opinion on some questions; ~~then~~, there is the right to grant pardon.

(a) Judicial appointment

In anglophonic states, the President appoints the Chief Justice. He also appoints the other Judges of the Superior Courts on the advice of the Judicial Service Commission. The advice of the Commission is mandatory in some (e.g. Zambia) and consultative in others (e.g. Malawi). The President can remove the Chief Justice and the other Judges of the Superior Courts on the recommendation of an independent tribunal set up by him. He may remove them only for proved misbehaviour

or inability to perform the functions of their office. Otherwise their tenure is secure.¹

The power of appointment of what are called Judicial Officers is vested in the President only in the case of Malawi. This includes power of removal. The President may delegate this power to the Judicial Service Commission. In the other states the Judicial Officers are appointed and removed by the Judicial Service Commission. The term Judicial Officers includes the Registrar or Deputy Registrar of the Supreme Court (or High Court), the Resident Magistrate or Magistrate, and such other officer as may be prescribed by parliament. The Commission consists of the Chief Justice (Chairman), the Chairman of the Public Service Commission or any member of that body designated by its Chairman, a Judge designated by the President (as in Malawi) or the Chief Justice (as in Zambia). One additional member is provided for in Zambia, and he is appointed by the President.

The function of the Judicial Service Commission includes disciplinary matters in regard to judicial officers. In the exercise of such disciplinary function the Commission is not

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1. The experience of Ghana has been instructive. There the Chief Justice was removed and put under protective custody for a judgment which he had given, dismissing the case against some former ministers charged with the crime of attempts on the life of the President and on his government. The removal of the Chief Justice, Sir Arku Korsah set off a wave of comments, mostly hostile. For lawyers it showed the insufficiency of formal provisions of security of tenure, unless other necessary conditions are present.

subject to the control of any person or body, except that in Malawi the President may from time to time give general or special direction.

In the francophonic states the President appoints judges of the higher courts - the "magistrats du siège", who are irremovable, unless they have been proved to have misbehaved or to be unable to perform the duties of their office. The President is assisted by the Conseil Supérieur de la Magistrature which in most states recommends judges (du siège) for appointment. The Conseil usually consists of the Minister of Justice (Chairman), the President of the Supreme Court and other judges. In some cases, as in the Congo (B) it is presided over by the President of the Republic himself. Again, the composition varies sometimes, as in Tchad, where it includes all the judges of the Supreme Court. In Madagascar the Conseil is known as the Conseil Supérieur des Institutions which also acts as a Constitutional Court. In some states, as for example Ivory Coast, Niger and Togo the recommending authority for judicial appointments is the Minister of Justice, who acts on the advice of the Conseil Supérieur de la Magistrature. The Conseil also exercises disciplinary control over all magistrats du siège, which includes the President and the judges of the Supreme Court.

(b) The right to request judicial opinion

This may perhaps be properly regarded as a limitation

on the President's power inasmuch as it relates more to the power of the Courts in relation to Executive (and Legislative) authority than vice versa. But even so, in a discussion on the President's power in relation to the judiciary, provisions that derogate from such power are worth noting. Such provisions exist in a number of Constitutions in Africa, where the Courts (normally the Supreme Court, or its constitutional section) may be asked by the President to make a determination on the legality or constitutionality of any proposal of law or any law already in force. In the event that a proposal of law is declared unconstitutional by the Court, it cannot be promulgated.¹ The role of the judiciary in exercising control over the Executive in this manner is obviously limited, particularly in view of the fact that the initiative lies elsewhere, and that the Courts have to wait until their opinion is sought. But once opinion is given there is no appeal from it, and it must be followed. Gabon provides a striking exception in that the Supreme Court there may on its own initiative point to legal anomalies and propose corrective measures.²

Such provisions are absent in the Constitutions of anglophonic Africa.

1. cf. e.g. Cons. Gabon, art. 60; Madagascar, art. 48; Mali, art. 44. In some states such as Mali, the President of the National Assembly has also the right to seek the opinion of the Court on similar matters.

2. Cons. art. 60.

(c) Right to pardon

This is a right of the President recognised in all African constitutions. As it is in the nature of a prerogative, the President himself alone decides, though he would normally take advice from the appropriate authority. The latter in most cases is the Minister of Justice, though he may be assisted or even substituted by a consultative body.¹

The significant aspect of the Executive in relation to the Judiciary lies in the controlling part played by the Judiciary in the exercise of its function. This has often occasioned conflict and controversy in other systems, and it appears that in Africa efforts have been made in many cases to reduce the areas of potential conflict. Prominent among these are the omission of Bills of Rights in many African constitutions. An eloquent plea for the exclusion of Bills of Rights has been made by the Presidential Commission on the establishment of a democratic one party state of Tanganyika, as it then was, which argued that detailed Bills of Right would not only involve conflict between the Executive and Judiciary, but could impair plans for development which:

"cannot be implemented without revolutionary changes in the social structure. . . . Decisions concerning the extent to which individual rights must give way to the wider considerations of social progress, are not properly judicial

1. e.g. in Tchad the Conseil Supérieur de la Magistrature studies the dockets in matters of pardon, and gives its opinions on them. Cons. art. 62.

decisions. They are political decisions best taken by political leaders responsible to the electorate. . ."¹

For this reason the scope of judicial review of Executive action is also restricted, as is legal proceeding against the President, while he is in office.² Presidential immunity from legal proceedings is, of course, usual to a Head of State. But where he is also the Head of the Government, it may be justifiably feared that this immunity as a Head of State may make serious inroads in the area of responsibility for the exercise of Executive power, particularly where the President wields immense Executive powers as he does in the African states.

For the rest, the Judiciary is recognised as "guarantor of individual liberty" and its independence is subject to explicit provision in most of the states: in the exercise of their judicial function the judges are to be subject to no other authority than that of the law. Equally universal is the provision that the President is guarantor of this independence.

There are no cases illustrating in what way this presidential duty can be carried out. In practice, the President

1. Report of the Commission, Dar-es-Salaam (1965), p. 31.

2. The report of the Commission was implemented.

being the head of the executive, it is from this quarter that any possible threats to judicial independence may be expected to come, in which case he would be "judge and party in his own case". In states with radical parties, the President of the Republic would be expected to protect the judiciary against measures taken by a party over which he presides. But in such cases the judge's role is conceived in the context of a general policy in which the party is supreme. Thus in Mali the Bureau politique national includes in its membership the Secretary of the Administrative Affairs who ensures the co-operation between the political, administrative and judicial organs.¹ Again in Guinea justice is considered as any ordinary public service of which the officers must be from the masses. Guinea has thus, following other socialist countries,² established people's courts.

In this connection a commendable step was taken in Tanzania following the recommendation of the Presidential Commission. The Commission was conscious that in a rapidly developing nation in which many officials are authorised to exercise wide discretionary powers, there would be abuse of power. It, therefore, recommended that in addition to dis-

1. cf. Internal regulations of the USRDA party.

2. Syedou Madany Sy, 'Recherches sur l'exercice du pouvoir en Afrique noire', (Paris 1965), p. 184.

ciplinary committees, a permanent commission be established with jurisdiction to enquire into allegations of abuse of power of both government and party alike. This commission which has been established, reports to the President on its findings. The President's problems as guarantor of judicial independence as well as ~~being~~ Chief Executive may be obviated through this institution, which is worth imitation elsewhere.

2. Extra-ordinary Powers

So far, we have discussed the powers of the President in normal times. The experience of other countries has proved that normal powers may not adequately cope with matters which need urgent and draconian measures. Africa is no exception in this respect; the constitutions have provided for the exercise of presidential power in periods of emergency. The readiness with which recognition was given - and later constitutional expression accorded - to this fact is borne out by the relatively small amount of debate on the subject in African constitution-making.

Perhaps the best example of a foreign experience in recent years which was available in support of "emergency provisions" was that of France, during the debate on what is now Article 16 of the French Constitution of 1958. This article was used as a basis for francophonic African constitutions on the subject. The arguments for it are incontrovertible; denying it would

mean making an opening for the disruption of the normal constitutional system.

The use of emergency powers during the colonial period also adds weight to the argument. Thus to take the case of Tanzania as an example, the Republic of Tanganyika (Consequential, Transitional and Temporary Provisions) Act, 1962 provides that the Emergency Powers Order-in-Council 1939-1961, are to continue in force as part of the law of Tanganyika (as it then was). The President thus acquired all the powers of making emergency regulations previously vested in the Governor-general.

We may consider two questions in relation to emergency matters:- (i) what constitutes emergency and (ii) what limitation can be imposed on the exercise of emergency powers.

(i) The nature of a state of emergency. Emergency situations, naturally, cannot be predicted with precision, either in terms of the time or the manner of occurrence. Constitutional provisions in this regard must therefore be laconic. Two varieties of provisions have been adopted in Africa to cope with emergency situations. The first simply states that the President may, at any time, by Proclamation, published in the Official Gazette, declare that a state of public emergency exists or that a situation exists which may lead to a state of public emergency, if it is allowed to continue. This is the type followed in Anglophonic states. The other type of provision, found in the constitutions of Francophonic

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states is more specific. A representative provision which may be cited is the one contained in the Constitution of the Ivory Coast.² It reads:

"When the institutions of the Republic, the independence of the nation, the integrity of its territory, or the fulfilment of its international commitments are threatened by a grave and immediate danger, the President of the Republic shall, after obligatory consultation with the President of the National Assembly, take the exceptional measures required by these circumstances. He shall inform the Nation of the whole matter in a message. The National Assembly shall meet forthwith."

It will be seen from the foregoing that the first type of provision gives the President full power of decision on an emergency situation; he decides whether and when it exists, and he alone decides to take the measures required. In the second type the situations which give rise to emergency are spelled out, in general terms. Even in this variety, however, the provisions are general and exhaustive enough to give a President a wide scope for decision. He is sole judge of what is grave and imminent danger. And once the conditions of emergency as foreseen by the constitutional provision exist, the power to take the necessary measures lies with the President.

1. The U.A.R. Constitution simply provides: "The President proclaims the state of emergency in the manner prescribed by the law." But it adds that the proclamation must be submitted to the National Assembly within the subsequent thirty days for approval, art. 126.

2. Art. 19.

The transition from normal to emergency powers would, of course, involve quantitative as well as qualitative difference in the power exercised by the President. The work normally handled by parliament, would fall on the shoulders of the President, thus adding more work to his Office. It would also add a legislative quality to what is normally (chiefly) an executive function.

We may note, in passing, that in the case of the Franco-
phonic states, the parallel of article 16 of the French Constitution is not apt in all respects; it must be remembered that in France the President of the Republic is normally required to exercise an arbitral function, and that he would take complete charge of the government only by virtue of article 16. In Africa, on the other hand, the notion of an arbiter-President is absent, as we have seen. Presumably this fact would make the transition to the exercise of emergency power less marked in Africa.¹ Nevertheless the provision in emergency, even potentially, is an important source of authority supplementing the normal powers in assuring the primacy of the President.

(ii) Limitation on emergency power. One kind of limitation on emergency powers, is, of course, the conditions, if any, set by the constitution for its exercise. This includes the

1. cf. J. Lamarque, "La theorie de la necessité et l'article 16 de la Constitution de 1958" R.D.P., 1961 No.3, p. 558.

circumstances such as when there is a threat to the independence or integrity of the nation. The Presidents in Africa are given complete discretion in deciding what type of circumstances require exceptional measures. This must be qualified in the case of the Francophonic states where in most cases the President of the National Assembly must be consulted before the declaration of the state of emergency. Yet, ¹ even in that case the consultation is done for obtaining advices only.

The message to the nation and the automatic meeting of parliament could be potentially an important source of control.² There are no specific provisions enabling parliament to continue to hold special meetings during the period of emergency, ^{- meetings} which the President cannot close. Such guarantees (which exist in France) would have been an important means of control, as they might have enabled parliament to impeach the President for any abuse of power. Nor are there provisions regarding the termination of the emergency. A provision, such as under article 16 of the French Constitution which requires that the measures taken shall be "inspired by the will to assure constitutional public bodies the means of accomplishing their mission, within the shortest possible time", would have enabled parliament to avoid or curtail undue prolongation of the period of emergency. Lavroff and

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1. In Cameroun the President consults the Prime Ministers of the federated states - art. 15.
 2. In Mauritania, the meeting of the National Assembly is not automatic; the President is required to convoke it.

Peiser in commenting on this subject have written:

"Thus, the provisions of article 16 of the French Constitution have been enlarged in the new Constitutions of African States. Rendering easier the application of exceptional powers and the controls that could be exercised less severe the African Constitution-makers have accepted to run the risk of seeing a President of the Republic less favourable to democracy establish a veritable dictatorship by applying the letter of the Constitution."¹

A President bent on dictatorship can lean on the public at large pointing to the failure of the normal functioning of institutions to justify his continued use of emergency powers. On the other hand, such an excess like all excesses contains the seed of its own undoing. When emergency measures are adopted the government usually states that they are adopted "in order to ensure an early return to peace, order and good government" or words to that effect. This was how such measures were taken in the Western Region of Nigeria in May 1962. These measures, or perhaps the government's approach to them (as an easy way out of a problem) contributed to the constitutional crisis of Nigeria.²

1. Les Constitutions Africaines. Tom Premier 1961, p.29.

2. Cf. O.I. Odumosu, 'The Nigerian Constitution, History and Development', (1963) pp.276-304.

SECTION II - THE MINISTERS

The central fact of African executive presidency is the preponderance of the President over other public powers, as already explained. This fact, of course, impinges upon the role of the Ministers, whether considered individually or collectively. Individually they are appointed and dismissible by him, and they exercise their executive function by delegation from him as his assistants. Their collective function as a cabinet or Council of Ministers is discharged subject to the (~~juridical~~) fact that the President is the policy-making directing and controlling authority, and that he presides over the Cabinet.

That being the case, why, it may be asked, should the position of the Ministers merit a separate treatment - separate, that is to say, from the section on the President? Or indeed why consider their position at all? Would not their diminished status and subservient role in relation to the President render such treatment unjustifiable, or at least of questionable value?

The point of these questions is not entirely irrelevant, but, if carried too far, would result in an elementary mistake about the nature of politics: no matter how concentrated the power of any head of government, the exercise of such power is subject to the co-operation of his "team". In any

given situation power is exercised with optimum result when the leader has the good will and support of his "team", everything else being equal. This lesson could not have been lost on the makers of African constitutions. The move from a classical Cabinet government to African presidentialism underlined the need for unified, simplified and effective power at the top. But while this toned down the importance of the Cabinet by enhancing that of the President, it did not abolish it. It merely pushed the Cabinet to the background - and, even then, not in all matters.

All the same, a detailed examination of the ministerial system is not appropriate in the context of this study. For, apart from the above considerations, ministerial functions in Africa are very much the same as everywhere else. Bearing all this in mind, however, we may note briefly the position of the Ministers in African presidential systems.

1. The Ministers individually considered

In the bicephalous systems of ^{the} Congo (B) and the U.A.R., the ministers consist of the Prime Minister and other ministers. In both states the Prime Minister and other ministers are appointed by the President. The President also appoints and dismisses ministers in the other (unitary-executive) presidencies as we have seen; so that there is no apparent difference between the unitary and the dual executive presidencies in respect of the appointment and dismissal of ministers

In the Congo (B) and the U.A.R. the Prime Minister has no power over ministerial appointment or dismissal, unlike his counterpart in a figurehead presidency. Although he plays an important nominating role, in strict law, the President may reject any nominee. Nor is there any constitutional provision in executive presidential systems requiring the ministers to submit themselves to parliamentary approval at their accession to office.

Each minister heads a ministry which is assigned to him by the President. He exercises his ministerial functions within the framework of the general policies laid down by the President either personally or in Cabinet. Within that framework the minister in Africa, as elsewhere, has a wide margin of power. He retains his post as long as he has the confidence of the President, or unless he resigns individually or together with his Cabinet colleagues. Some constitutions contain puzzling provisions in respect of dismissal of ministers. An example of this is article 21 of the Constitution of Gabon which provides that the President puts an end to their (i.e. the ministers') functions by decree, "en conseil des ministres",¹ this means that a minister takes part in a decision about his own dismissal.

Incompatibility with other Functions

Ministerial posts are incompatible with membership of the

1. Art. 21, paragraph 3.

National Assembly in a number of states. This is exemplified by article 25 of the Ivory Coast Constitution.

This functional incompatibility follows a norm derived from the doctrine of separation of powers, which still exerts its influence, though not as originally formulated in *l'Esprit des Lois*. Some constitutions have departed from the norm by permitting members of the National Assembly to be eligible for ministerial appointments. An example of this is Gabon.¹

Others follow the Westminster model, making membership of the National Assembly a requirement for such appointment - for example, article 44(2) of the Zambian Constitution, and article 49(2) of the Malawi Constitution. But the President can appoint a limited number of ministers from outside parliament.

The U.A.R. Constitution contains some interesting provisions on the subject. It is provided that no member of the National Assembly may at the same time assume any other public office in the government or in the units of local administration.² But it is also provided that members of the National Assembly may be appointed ministerial under-secretaries for National Assembly affairs.³ The apparent conflict in these two provisions can be resolved if we construe

1. Art. 21.

2. Art. 96.

3. Art. 143.

the phrase "ministerial under-secretary for National Assembly affairs" as referring to a post which falls outside the category of "public office in the government". The term "public office" corresponds to the civil service.¹

The policy behind incompatibility of a ministerial post with parliamentary mandate, apart from its historical connection with the doctrine of separation of powers, can be explained by reference to considerations of government stability. In France, for example, the experience of past republics has shown that the main cause of instability in the government was the ambition of parliamentarians to become ministers.²

In Africa this lesson supplied one of the cogent reasons in support of the creation of an Executive independent from and preponderant over the Legislature. It also gives the President a wider field of choice of talent and qualification for ministerial appointment. This latter factor seems to have influenced the constitution-makers of some Anglophonic African

1. Such an explicit provision prohibiting the combination of bureaucratic (civil service) power with parliamentary mandate and privilege is rare. But it reflects a radical policy, though not articulated in other African constitutions implicit in this policy, apart from factors of efficiency, through division of labour, is a suspicion of the "mandarins" who are generally considered as opponents of revolutionary programmes.

2. cf. M. Duverger, *op.cit.* p.105.

States, where the general rule requiring ministers to come from parliament is modified by provisions empowering the President to appoint a limited number of ministers from outside parliament.¹

Other prohibitions also exist which are designed to guard against possible abuses. In most of the constitutions of the Francophonic states ministers are explicitly precluded from membership of the cadres of the public service; and in no state may a minister be engaged in any private professional, commercial or industrial enterprise, though this is left outside the constitution in Anglophonic states. This is a subject on which express provisions in the constitution can be very useful, in as much as the constitution and the code of conduct that it decrees are presumed to be more known by more people than organic laws issuing from it.²

Again, in most of the Francophonic states ministers are prohibited from exercising representative functions for organisations such as trades unions or co-operatives. This prohibition is aimed at avoiding pressure from being brought

1. cf., for example, art. 50 of the Malawi Constitution.

2. Not that this is in itself a guarantee against corrupt practices; but it would be a higher frame of reference as an educational code prescribing ministerial behaviour or activity. Such a provision would make it impossible for ministers to hold posts and at the same time use it in furtherance of private gains, in particular through licensing powers which some former Nigerian and Ghanaian ministers are alleged to have used.

to bear on the government by economic groups. It is the counterweight to the provision discussed in the last paragraph.

2. The Government

The ministers considered collectively and grouped round the President are known as the government, though this term is also used in general terms to describe a much wider organisation run by the President and his ministers. The government presided over, directed and controlled by the President is the supreme executive and administrative organ of the state.

In the constitutions of Anglophonic states there is a body known as the Cabinet which forms the core of the government. It consists of the President and the ministers, and is presided over by the President. Membership of the Cabinet does not in every case include all ministers, automatically. In Malawi, for instance, the Cabinet consists of the President and "such ministers as may from time to time be appointed as members of the Cabinet by the President"¹. The composition of the government, on the other hand, is wider; it includes ministers and junior ministers (or deputy ministers, as they are called in some states, e.g. the U.A.R.)². The office of

1. Art. 53(1).

2. The number of ministers of the government is rarely fixed. It is fixed at fourteen in Zambia. ~~For xxxxxx.~~

ministers and junior ministers is established by parliament.

In Francophonic states the equivalent of the Cabinet is the Conseil des ministres (Council of ministers)¹, which consists of the President, and his ministers. The President presides over the Council. In some of the constitutions the Council of ministers is at times used interchangeably with "the government". Also, exceptionally, no mention is made of a Council of ministers in ^{some} ~~the~~ constitutions (e.g. Cameroun and Mauritania).

It should be noted that although no difference exists between the dual executive presidencies of the Congo (B) and the U.A.R. from the others in respect of the composition of the Cabinet and its chairmanship, the relevant article of the U.A.R. Constitution provides that the President has the right to call a meeting of the Council of Ministers, and to attend, and to preside at the meetings which he attends.² The Prime Minister presides at meetings not attended by the President. This arrangement gives the President a free hand, as the need arises to assert his influence directly, and also to preserve a detached posture. This is one advantage to be derived from a dual executive presidency, where the executive President can throw a smoke-screen around himself and thus

1. In Guinea it is called Cabinet.

2. Art. 115.

maintain continuity of the state, while governments may come¹ and go.

The Function of the Cabinet

The exercise of collective responsibility creates an esprit de corps, which tends to make a collective organ a little ~~more~~ different from being just the mere sum total of its members. This is true of a cabinet and it is true even in cases where the cabinet is not formally recognised as one of the highest institutions of the state, subordinate as it is to the office of the President.

In Anglophonic Africa the usual formula adopted in the function of the Cabinet is that it shall be responsible for advising the President with respect to the policies of the government and with respect to such other matters as may be² referred to it by the President.

In Francophonic states, on the other hand, the Cabinet is given a role which is more than advisory, and in many states the constitutional provisions make it an obligation for the Cabinet to decide questions of policy. Among the usual questions which the Cabinet must deliberate upon are:-

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1. In the U.A.R. there have been three government changes. With each change the new Prime Minister has tended to represent differing views from the outgoing Prime Minister, on the crucial questions of policy causing the change - a sort of trial and error process seems to be involved. See Chapter Six.
 2. cf. art. 51(1) Cons. of Zambia, and art. 52(2) Cons. of Malawi.

- matters concerning the general policy of the state.
- draft laws to be sent to parliament.
- ordinances and executive decrees.
- appointments to the higher posts of government.¹

In some states the formula varies with substantially the same result; for example in Madagascar the provision reads:- "In the council of ministers, the President of the Republic determines the general policy of the Republic, etc."²

Among the important functions of the Cabinet must also be mentioned that of co-ordination of government work. The device of Cabinet and inter-ministerial committees help in this task. There is also a Cabinet Secretariat with a Secretary appointed by and responsible to the President. The working relationship of Cabinet Committees with the Cabinet and the various ministries is not subject to written regulations; it operates on an informal basis.³

It is clear that the Cabinet in Africa makes decisions on major policies, and that there is an esprit de corps present in as much as the ministers who make up the Cabinet belong to the same party, and have the same objectives. The policies which they decide^{on} are attributed to them as a group; from the success or failure of such policies they reap a harvest of praise or blame - as a body.

1. cf. for example, Cons. Ivory Coast, art.22; Tchad, art.10.

2. Art. 12.

3. This has been gathered from interviews of officials of various governments of Africa.

The differences from the Westminster type of Cabinet emerges¹, however, because of the over-riding position of the President, in Africa. The difference would be particularly evident where the President plays a conciliatory role - where there is, for example, an inter-ministerial dispute. In such a situation the President has the last word, not the Cabinet, which is not the case in the British Constitutional practice, for example.¹

As a consequence the functional relation between the President and the ministers in Africa is necessarily an ambivalent one. On the one hand, in his capacity as Chairman of the Cabinet, he must arbitrate, urging this, that and the other priority, but steering tactfully. Where questions of budgetary allocation to various ministries are involved, for instance, there would be a scramble and the Minister of Finance may need backing or prodding by the President as the priorities of the claims determine. In this arbitral function the role of the President is not different from that of the Prime Minister under the Westminster type of government. On the other hand, the executive President in Africa is no mere arbitrator. He is not only a "managing director", but also the "chairman of the board of directors", to use the language of commercial law. The ministers would be subtly reminded that the President embodies the collective national purpose,

1. cf. Jennings: The British Constitution, 4th ed. pp.143-4. See also Chapter Four supra.

in the name of which they all work. It is not difficult for them to read "order" in his "opinions". It must be remembered that the ministers are responsible to the President.

Government Responsibility

In the Westminster type of Cabinet government, the Cabinet is said to be collectively responsible for the whole policy of government. This means that if a minister's decision is accepted by the Cabinet, and the decision is questioned in parliament, the Cabinet would treat the matter as one of confidence in itself. Parliament provides the medium for the discharge of the responsibility. It acts as a forum for deep probings and questions on the issues involved; the rest is left to the press, radio and television reporters and commentators. Everything takes place in the light of public opinion, and the public acts as judge every four or five years at general elections.

All this assumes several things. Collective responsibility is inseparable from Cabinet government which goes together with a parliamentary system. A parliamentary system in the classic sense assumes a two-party or multi-party formation in the political life of the nation. In most African states none of these things are present in the form that they exist, say, in Britain. Where the idea of responsibility has been introduced it has been modified in various ways, for various reasons.

In some Anglophonic states the principle of collective responsibility to Parliament is recognised.¹

In the Francophonic states two varieties of arrangements exist. In one type ministers are responsible to the President and the President is responsible to parliament. We may cite two examples: Mali and Madagascar. In Mali the responsibility of the President is subject to strict conditions; the President may be put under a motion of censure in two situations only, (a) where he pledges the responsibility of his government over a general policy declaration, and (b) where not less than a quarter of the members of the National Assembly sign a motion of censure. In any event, the motion of censure must be "constructive".² The vote of censure is taken by an absolute majority of the members of the National Assembly. If a motion of censure is passed twice over a period of twenty-four consecutive months, the National Assembly is dissolved,³ and with it the government.

Another type followed in Tchad contains peculiar traits; there is no presidential responsibility, but his government is responsible to the National Assembly. The President himself

1. e.g. cf. art. 53(3) Cons. of Malawi. It is interesting that in Zambia no such provision exists.
2. It must state the principles of a government programme.
3. Art. 37. For a somewhat more involved procedure in Madagascar, see pp. 284-2 supra.

may, after a deliberation in the Council of Ministers, pose the question of confidence in his government to the National Assembly. Also the National Assembly may pass a motion of censure. If a vote of no confidence or a motion of censure¹ is passed by the required majority, then the President can do one of two things: he may either dissolve the Assembly or² dismiss the members of the government. This places the President in an arbitral position between the Cabinet and parliament. As his term of office is fixed, dissolution of parliament would not affect him; on the other hand, he can dismiss his government and form another one. Either way he holds the 'trump card'.

CONCLUSION

The description and analysis of the constitutional provisions on the executive of African presidential systems attempted in this chapter has shown that the constitutions have enshrined a new principle: the dominance of the executive over the other institutions of the state. The discussions in this chapter have centred round the constitutions as the basic formal sources of power. The detailed nature of these pro-

1. Two-third majority for projets de lois; absolute majority for questions of general policy.

2. Art. 45.

visions as well as the wide scope of the study made it imperative to exclude laws other than the constitutions, although a few references to other laws have been made, wherever it was found necessary.

From the constitutions themselves it is clear that both parliament and the judiciary are in a subordinate position. Every conceivable constitutional mechanism was devised to assure the dominance of the executive. But constitutional provisions alone are not sufficient to guarantee this. Indeed, the structure of the executive and its function cannot be properly understood if it is only looked at in its formal (static) aspect as given in the constitution. The dynamics of the exercise of its power can be better appreciated by reference to other matters. Part Three of this study is designed to fulfil this objective. The dominant executive has been dictated by the need of the times. It has advantages as well as dangers, and it will need a great deal of care, integrity, imagination and creativity to devise the necessary means of control, while preserving the dynamism implicit in it at a time of transition and development.

A strong presidential executive system tends to favour (and in general is based on) a single party and the dominance of a single person over others and this in turn creates a tendency for loyalties to single figures rather than the party structure. This accentuates the problem of succession and

may thus disturb whatever institutional structure may have been built up, by the time the succession crisis occurs. Some of the constitutional provisions on this question provide an answer, but, there again, they are not in themselves sufficient to avert or resolve a crisis of this sort if it comes. As we shall see in Chapter Six, some states (e.g. Mali) pay due attention to the building of a party structure in which collective leadership is emphasised. This is one solution, but the general trend so far has been more personalisation of power which, as we have seen, is given constitutional legitimacy in the strong executive presidential system. Constitutions can, of course, be changed to suit changing circumstances as the need arises. But once established they tend to acquire an aura of permanence which can affect people's attitudes.

PART THREE

THE DYNAMICS OF EXECUTIVE POWER

In the preceding chapter we saw that in the majority of African states the supremacy of the executive is an established constitutional fact. The following two chapters attempt to answer the question what this constitutional fact is based on, and how the executive secures the political and administrative basis for the exercise of its power, for carrying out its policies and maintaining its predominance. The formal legal statement of institutional relationships crystallised in any written constitution is a statement of abstract principles of action, of rights and duties. It cannot be expected of men to live up to it fully. In the dynamics of constitutional life practice often departs from theory. This is probably more true of the African situation - and of all developing nations - where the frequency and latitude of departure of actual practice from constitutional provisions must be greater in view of the great gap existing between modern institutions and the reality of social and political life on which they have been superimposed.

Traditional systems such as the African monarchies rely on traditional (and above all religious) institutions as a basis of support. Yet they also now make use of modern devices for the same purpose.¹

1. cf. the use of the referendum and a palace party by King Hassan II of Morocco.

It is much more necessary for modern leaders, who have the weight of tradition and inertia against them, to devise effective means of reaching down the root of their societies, and relating this political mechanism ^{to} with the administrative mechanism of carrying out decisions. The political party fulfils the first objective, while the civil service is the principal administrative instrument executing the decisions of the government.

The Party

The party is generally recognised as the most important political instrument. Africa, however, is not the birth place of modern political parties, but rather owes much to Europe where political parties were developed and refined. As M. Duverger has written:

"the development of parties has exploded old types of political classifications inspired by Aristotle and Montesquieu.....In fact the distinction of one partism, bi-partism and multi-partism tends to become the fundamental classification of contemporary regimes."¹

The importance of and the need for political parties is therefore not limited to Africa. But Africa has

1. M. Duverger: Les Partis Politiques, p.431.

produced a type of one-party government which may be described as peculiar to that continent. This peculiarity is very much related to African Executive presidencies.¹ It is in this context of the one-party state that the dynamics of executive power can be properly understood. Hence the two chapters that follow. Here we will give a summary of the reasons which are usually advanced as justifications for the advent and need of the one-party state.

Firstly, it is seen as a prerequisite for national integration. Secondly, it is regarded as an essential agency in the process of modernisation in which African countries are involved. Thirdly, it can act as a vital link and line of communication between modern governments and the masses. Fourthly it is seen as an essential training ground for a modern political elite which would be engaged in modernisation but which must at the same time be constantly in touch with the masses and represent their interests. All these vital tasks, it is argued, cannot be performed in Africa in a bi-party or multi-party situation. In chapter six we will examine this matter along with an account of the organisation of some (representative)

1. cf. J. Buchmann, op.cit. pp.234 et seq. esp. pp. 339-42.

parties, in Africa, and their relation to the executive.

The civil service

As for the place and role of the civil service in a one-party state, some questions arise on the executive-civil service relationships and party-civil service relationships, many of which are peculiar to the one-party state. In chapter seven we will discuss these relationships and some of the problems that may arise from them.

Chapter Six

The Executive In Relation to the Political Party

1. The Emergence of one-party systems

The phenomenon of the one-party state has become an almost universal one in Africa. Even in states where more than one party are allowed to exist legally, the political facts of a dominant party practically eclipse the others, if any, or render their emergence impossible. For example, in the Ivory Coast, the constitution guarantees freedom of organisation and expression to all parties and groups that respect democratic principles and the principles on which the Communauté and the Ivoirien republic are based.¹ But the facts of the dominant party apart (or rather owing to these facts) the penal law of the Ivory Coast leaves little room for legitimate criticism and hence effectively discourages any form of political competition or of public debate.²

1. Art. 7.

2. § Aristides Zolberg - 'One-party Government in the Ivory Coast, (Princeton U.P. 1964), pp.261-3; Cf. also Law pp.59-118, Journal Officiel, Sept. 1, 1959, Arts. 1, 2 and 7 cited therein.

Similarly in Guinea, art. 40 of the Constitution guarantees freedom of association and in strict law parties can be created. But as President Sékou Toure has said they must be formed "with the interest of the nation in view."¹ What is the nature of the one-party state? What are its roots and what are its functions?

Several studies have been made recently which attempt to analyse and explain the origins and character of one-party governments.² Some of these studies analyse the social background, organisation and function of the parties.³ Others analyse the causes of one-party systems and discuss some of the implications in more detail.⁴ Some lay more emphasis on their role as instruments of national unity.⁵

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1. C.f. Seydou, Madani Sy. 'Recherches sur l'exercice du pouvoir politique en Afrique Noire' (Paris 1965) p.144.
 2. Cf. e.g. (1) Ruth Schachter, 'Single-party systems in West Africa' - 55 American Political Science Review (June 1961) pp.297-307; (2) Marilyn Kilson, 'Authoritarianism and single-party tendencies in African politics'. 15 World Politics (Jan. 1963) pp.262-294; (3) Immanuel Wallerstein, 'Africa: the politics of Independence' (New York Random House, 1961) pp.85-102, 163-167. (4) Frank G. Snyder, One-party government in Mali (Yale U.P. 1965). (5) John A. Ballard, 'The Evolution of Single-party systems in French Equatorial Africa', - Institute of African Studies, University of Ife, Ibadan Branch, Ibadan - Seminar paper 1963/64/8.
 3. E.g. Ruth Schachter op.cit. On African political parties in general cf. Thomas Hodgkin, 'African Political Parties' (London, Penguin 1960).
 4. E.g. M. Kilson, op.cit.
 5. E.g. I. Wallerstein, op.cit. This author later shifts his attention more to some of the problems of the one-party system: c.f. an unpublished paper entitled 'Political Parties in Post-independence Africa: recruitment and participation'.

From such studies and from a close observation of the contemporary political scene in Africa it can be said that the emergence of the one-party state was inevitable. Moreover the phenomenon is linked with the emergence of the strong executive. The leaders who founded or helped to found the parties invariably emerged as the figures round whom other personalities revolved. With the accession to independence the party leaders became the chief executive and the more prominent among his party brethren became his ministers. The chief executive remains the leader of the party, in most states. Thus came about the party-government dichotomy which characterises the dynamics of executive power in Africa today. The inevitability of the advent of the one party state can be borne out by the facts that in some states the Opposition leaders volunteered or were persuaded to join the government party and dissolve their own party. Thus in Kenya Mr. Roland Ngala, the leader of KADU (Kenya African Democratic Union) crossed the floor of the Kenya House of Assembly with most of his followers, and, having dissolved KADU, became a minister in the KANU government of Mr. Jomo Kenyatta. Yet, on

the eve of Kenya's independence the differences between the two parties were said to be unbridgeable, being rooted, as it was claimed, on tribal differences.¹

Opposition parties have been dissolved either through administrative or political manoeuvres as in Kenya, or legally by passing an Act to that effect, as happened in Tanzania. In the latter case, no opposition party can legally exist, whereas in the former it can, as it does in Kenya, where Mr. Oginga Odinga, one of the chief leaders of KANU, resigned from the government and party of KANU, to form another party. In many states the existence, or the legal provisions permitting the existence of "opposition" parties simply masks the reality of what is in effect a one-party situation, as it has been pointed out already in respect of the Ivory Coast. The same is true of many ex-Francophonic states.²

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1. E.g. The constitutional talks held in London in the Autumn of 1963, on the eve of independence were marked by such divergences of views, and the constitution worked out at that conference contains some of the most elaborately cumbersome provisions on 'regional' and 'minority' rights. The KANU government substantially modified these after independence. President Kenyatta expressing satisfaction on this matter has said: "Our greatest triumph as a party and as a nation came with the voluntary dissolution of KADU. ~~Special~~^{Special} KANU parliamentary group c.f. East African Standard 12.3.66.
 2. E.g. Congo (Brazzaville), Gabon and Chad, c.f. J.A. Ballard, op.cit. p.2.

2. The Raison d'être of the one-party system

The appearance of one-party systems in Africa has been variously received in various quarters. The Western press, and some academic writers generally condemned it as authoritarian. Some bodies which have an interest in Africa have received it with cautionary remarks. Thus the Africa Bureau wrote in 1963, as follows:-

"The formation of one party states in Africa has been a controversial subject. The dominance by one political party, which has been to the fore in the campaign for independence, over weak opposition groups based on regional considerations or formed after independence was to be expected. The question now raised is whether the formal creation of a one-party state is in conflict with the establishment of a free society. One party states exist in many countries forming the Organisation of African and Malgasy states, and in Ghana, Tanganyika and self-governing Nyasaland. Circumstances differ in each of these territories, and no generalisations are possible. But the Executive (of the Africa Bureau) views with anxiety the tendency in certain countries to put leader and party above law and to regard all criticism as treachery. The government of a developing territory must clearly give priority to economic development, and time cannot be spared for protracted debate about the merits of one scheme over another's but acceptance of any scheme or policy by the people affected is essential to its success. Concentration of energies through one single party may bring good results in certain circumstances but the test of freedom will come when new parties begin to canvass alternative methods and achieve a reasonable measure of support from the people."¹

1. Annual Report of the Africa Bureau, (London), April 1962 - March 1963. pp.5-6.

These words, in effect, summarised the views of several writers who considered themselves as friends of Africa, and who were puzzled by the one-party system. Some observers who have written about Africa condemned it out of hand, while others defended it. The debate between Professor Arthur Lewis and Mr. Colin Legum exemplifies these respective positions.¹

Perhaps the most eloquent case which has been made for the one-party state from amongst African leaders is one by President Nyerere of Tanzania.² Dr. Nyerere argued the case for the one-party state in Tanganyika (as it then was) chiefly on logical, rational grounds, and not merely on the basis of need in developmental context. His arguments led him to the conclusion that the one-party system can be more democratic than two-party or multi-party systems. He begins by questioning the value or the democratic nature of bi-party or multi-party systems as practised in Western countries. On a national executive of a party, he explains, it is common practice for the members

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1. c.f. Encounter, Aug. 1965, p.3 'and Dec. 1965 p.51 'Beyond African Dictatorship' cf. also Arthur Lewis 'Politics in West Africa (London 1965) pp.17-63.
 2. c.f. Julius K. Nyerere 'Democracy and the Party System' - Dar-es-Salaam, 1962.

freely to discuss and criticise the policy of the party. But this freedom is denied them once they enter Parliament. There a party line must be followed - a line which is approved by the party's leaders. The reason is that at the executive meeting of the party-board policy is being laid down which not only permits but requires free discussions. There is no party line to follow at that level, because no such line has been agreed upon, as yet, whereas at the parliamentary level there is a line to be followed. Theoretically all that is left open to discussion in Parliament is detail on how, when and in what order of priority the policies shall be put into effect.

"Given the two party-system.....some limitation of freedom is essential - both at election time and in debate - in order to enforce party discipline and unity. And we have seen that these restrictions are not necessary where you have only one party. It seems at least open to doubt, therefore, that a system which forces political parties to limit the freedom of their members is a democratic system, and that one which can permit a party to leave its members their freedom is undemocratic (and).....that, where there is one party; and that party is identified with the nation as a whole, the foundations of democracy are firmer than they can ever be where you have two or more parties, each representing only a section of the community."¹

1. C.f. Nyerere, op.cit. pp.4-5.

Nyerere further argues that a two-party system can be justified only when the parties are divided over some fundamental issue; and that if it is based otherwise it can only lead to factionalism, antagonism and waste.¹

To critics of the one-party system he adds:

"Our critics.....should.....remember the historical difference between parties in Africa and those in Europe or America. The European and American parties came into being as the result of existing social and economic divisions - the second party being formed to challenge the monopoly of political power by some aristocratic or capitalist group. Our own parties had a very different origin. They were not formed to challenge any ruling group of our own people; they were formed to challenge the foreigners who ruled over us. They were not, therefore, political 'parties' - i.e. factions - but nationalist movements. And from the outset they represented the interests and aspirations of the whole nation."²

Nyerere's ideas on African socialism (of a classless African society) provide a theoretical background for his practical conclusions about the one-party state. But this, as we have seen in chapter one, was not on the basis of a Marxist argument.³ It is interesting to note that some non-Marxists, in the Ivory Coast, for

1. *ibid.*

2. *ibid.*

3. For a theoretical justification of the one-party systems along Marxist lines c.f. Madsira Keita 'The Le Parti Unique, en Afrique Noire'. *Présence Africaine*, XXX (Feb.-March 1960) pp.3-27.

instance justify the one-party system on the basis of the Marxist notion of a correspondence between party and class. The argument was that since there was as yet no class distinction in Africa, there could be only one movement for the entire country. This is sometimes put in reverse: since parties reflected class divisions, the appearance of an opposition party must be prevented in order to avoid the development of a class struggle.¹

It must be stated here that one-party government is not peculiar to Africa. Communist countries practise one-party government in the name of the working class. Nor is this a novel phenomenon. As an eminent American academician has written:

"The overwhelming majority of all the organisations of man throughout history have been ruled by one-party governments. Most of the time in most parts of the world all organisations have been under one-party-rule. In certain parts of the world at certain times in history there have been a few two-party (or multi-party) organisations; but one-party rule is the standard and well-nigh universal case."²

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1. C.f. A. Zolberg, op.cit. p.264 and also footnote 48, of p.264.
 2. Cf. Clark Kerr, 'Unions and Union Leaders of their own choosing' - Centre for the study of Democratic Institutions, Santa Barbara, California, p.12.

But historical parallels or rational arguments are not always advanced in support of one-party governments in Africa. Even in some cases where this is done, it may be rather in the nature of rationalisation of steps already taken under the pressure of immediate problems. The leaders who had led independence movements were faced with growing disillusionment on the part of sections of their populations. The removal of the former enemy, the colonial power, left them facing a diversity of problems, some of them created by the colonial experience. There was a tendency to re-assert sectional or regional interests which made political parties the hot-bed of ethno-centrifugal forces. The Opposition parties in Ghana, for instance, were based mainly on regional grounds, though this was by no means limited to Ghana. President Kenyatta on the other hand facing an Opposition which grew as a splinter from his KANU party on grounds of differing policies has had this to say:

"....Perhaps the gravest danger for us and for all other developing countries is the tendency for some people to exploit the known problems of our people for personal political reasons. We sometimes hear of people who go about telling the general public that government had done very little to improve the conditions of the masses.....they wish to exploit the fact that we cannot achieve everything overnight. They play upon the emotions of our people although they know that they have no alternatives to offer."¹

1. Jomo Kenyatta, op.cit.

As the "independence leaders" found that their natural authority became tarnished with the passage of time and in the face of the challenge of the post-independence reality, they were driven to taking drastic measures to regain their former popularity and to maintain their authority. Some became defensive and hyper-sensitive to criticism. Some of the measures they took tended to create tension and hostility and in some cases some leaders of suppressed opposition parties replied by desperate attempts on the life of the chief executive.¹ This in turn heightened the tension and sense of insecurity of the government leaders. It also confirmed the arguments for the need of one-party government.

Colonialism produced the framework of a central government, and in reaction to itself, it also (later) produced a nationalist movement. But, as Mr. Colin Legum has observed, "it failed to integrate the tribal, regional and sectional interests into a coherent national unit with an overriding single loyalty."²

1. E.g. the assassination attempts on Nkrumah in 1962.

2. C.f. Colin Legum 'Is Africa falling apart', The Observer, 27.2.66.

African governments of all newly independent countries have thus been faced with the double task of (i) establishing their own authority, and (ii) achieving a rate of economic growth commensurate with the expectations which they themselves helped to create. This was often accompanied by the emergence of assertive pressure groups which led to struggle for power and to diversion of energy and waste. Where Governments faced such situations at times when their own positions might be precarious, the idea of the one-party state had an irresistible attraction, and all the arguments in its favour acquired greater significance as against any contrary arguments.

3. The Character and Role of the party; and its Relation to the executive

The heading of this section may be misleading in that it might appear to subordinate the executive to the party. In actual fact, the history and organisation of the party in most African countries is such that it is the executive which dominates the party, and not vice versa.

Before independence, the popular parties were organised for the purpose of mobilising the masses in order to remove colonial rule and attain independence. With the attainment of political independence the focus shifted to the consolidation of power, of national unity and economic development. For this purpose the executive concentrated in its hands the essence of political motive force, and this in turn chiefly determined the nature of the party as of the constitutional structure. The party leaders and stalwarts who were originally almost always a combat group struggling for independence, became the leaders of government in the new independent states. They now had to govern and, for this purpose, had taken over the state apparatus of governing. As regards the party this could mean either that it would be left in ~~the~~ limbo, or alternatively, that it would be organised for a new purpose. The latter course was followed, of necessity.

The ideal role of the party in such a situation would be, on the one hand, to articulate the aims of the government to the people and, on the other hand, to remind the government of the needs of the people and to that end to participate in the preparation and appraisal of policy. These tasks are of prime

importance. The first is important, given the fragile nature of the new State. The party is indispensable in the task of national integration and modernisation. This is so because of the driving force of the party's central authority as a directing and co-ordinating organ and the local 'animation' which its branches could produce.

The second task is also necessary, particularly in view of the weakness of parliamentary and other constitutional organs of control. The structure and organisation of the party in most newly independent states reflects these considerations. The role of the party and its relation to the government is a subject on which there are patterns of similarity in most of the states. The discussion that follows will, therefore, be limited to a few selected but representative cases.

The examination of the party structure and the organisational principles underlying the party structure will, it is hoped, emphasise the role of the party and its impact on the government. The party has replaced parliament as the real focus of political activity, in the sense that it is in the party that attempts are made to secure a consensus of opinion. The leaders keep in touch with the grass roots through the party organisation, practically every day of the year, whether parliament is in session or not. Messages pass

up and down the organisational network conveying orders, ideas and opinions of the government to the population and reactions of the country to ~~the~~ government measures. This mechanism does not require the literacy of the members, for communication can be carried out in various other ways in various vernaculars by the party branches.¹ The party congress itself is an event of great ceremony. Apart from its function as a policy-making body, it has a ritual function, ritual in the larger sense of the word - as in any general election or party convention in America, for example.²

We will start examining some parties in Francophonic states and later move on to others.

A. Francophonic States

In some studies attempts have been made to classify African one-party systems on the basis of the nature of their relationship with the government.³

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1. An interview with some Guinea officials has revealed to me that President Sékou Touré ~~has~~ used the party organisation to secure the consent of the party when he decided to invite Kwame Nkrumah to share the headship of the Guinea state.
 2. C.f. V.W. Turner's definition of ritual as a mechanism which periodically converts the obligatory into the desirable: in 'Closed Systems and Open Minds'. p.32.
 3. C.f. Seydon Madani Sy, op.cit. pp.167-202.

Three types of relationships are discerned according to such study: (1) the pre-dominance of the executive over the party, as exemplified ~~by~~ the Ivory Coast; (2) the co-ordinate (collaborative) relationship between the executive and the party as found in Guinea and (3) the subordination of the executive to the party, as found in Mali. It is maintained that in spite of the identity of the principles of organisation of the parties in the three states other differences are nonetheless evident. The structure of the party in all three states is hierarchically organised, but (it is maintained) the internal functioning of the Parti Démocratique de ^{la} Côte d'Ivoire (PDCI) is relatively more flexible than in Guinea and Mali. The reason given for this is historical, i.e. the fact that the PDCI still retains close links with the Rassemblement Démocratique Africain (RDA).¹ The reason given for the predominance of the executive over the party is the personal position of President Houphouët-Boigny. Although every party and government leader in Africa has a personal history and special position in the State

1. Sy, op.cit. p.148; c.f. also generally Thomas Hodgkin op.cit.

because of such history, the position of president Houphouët Boigny is particularly enhanced.

Personalities can affect the character and function of parties. As founder of the PDCI, Houphouët Boigny has been a dominant figure, as were Sékou Touré and Modibo Keita in their respective parties. But unlike these two Houphouët Boigny did not have to contend with the French colonial (or rather neo-colonial) power and their ^{agents in the} years immediately before independence and afterwards.¹ His dependence on the party was therefore less marked, with the consequent diminished role and status of the party in policy formulation and control. The PDCI does not govern or legislate, but rather plays a minor advisory role in the higher institutions of the state, acting as a medium of communication between government and people.

The party in the Ivory Coast is completely subordinate to the executive; in Guinea, executive predominance is qualified ^{by} ~~with~~ the unity of party and government at the level of chief executive and is tempered by other factors. But the predominance of the executive is there. In Mali not only is there unity of party and government at the highest and at the lowest

1. His policy was in harmony with that of France.

levels, but the structure and role of the party is such that it may be said to control the executive. In reality a co-ordinate relationship is perhaps nearer to the truth than executive subordination to the party.

(i) Structure

The structure of the three parties (the PDCI of the Ivory Coast; the PDG of Guinea and the USRDA of Mali) owes much to the fact that they were based on the organisation of the French Communist party, unlike the Union progressiste Sénégalaise (UPS) which was influenced by French socialist parties.¹ In all three parties the organisational principles of "democratic centralism" and of party discipline operate. The first means that all the personnel of the directing organs of the party are chosen by a democratic process of election from the top to the bottom. All party branches are accountable periodically to the organ which elected them and to that which is immediately above them. The branches can ask for information or make propositions on party programmes and activities to any party organ above them following the hierarchy of the organisation. All

1. Cf. Millicent, 'Forces et idées forces...p.56 cited by Sy op.cit. p. 147.

decisions of all branches are taken by the majority of the members present; and once a decision is taken the minority are bound by the decision of the majority.¹ The branches must implement the decisions of the higher organs of the party.²

Again as regards discipline, the three parties share common principles and practice. The first principle (of democratic centralism) implies the necessity of strict discipline. Members of the party must submit to certain strict obligations which make them party militants. They must participate actively in the political life of the country. Within the framework of the party organisation they are expected to offer ideas and criticisms on programmes and activities. Each ^{one} must fight against racialism, regionalism, tribalism and other vices - individual or collective. There are a set of sanctions applicable against members for breach of party discipline. The over-all effect of these sanctions

1. cf. Sy, op.cit. p.148.

2. Cf. however, Arts. 19, 20 Statutes of the USRDA; the party leaders in Mali are required to explain the objectives of the party to the militants ~~of~~ and motivate them through argument and not coercion. Cf. also in this respect president Senghor's exhortation to a "dialogue" with the people as against coercion - rapport du secrétaire-general de L'UPS Ve Congrès.

is to make members active and obedient, to curb indiscipline and thus integrate them to the party.¹

The party machine and its functioning reflect the two organisational principles mentioned above. Democratic centralism implies a pyramidal structure of the machine while discipline ensures the cohesion and regular functioning of the machine. In the ordinary operation of this machine, the centre must be given, with the greatest accuracy possible, the point of view of the base (branches) so that it can make the right decisions.

At the top of the organisation of the party there is the Congress, which is the supreme policy-making organ. It issues programmes of action, hears reports and controls the accounts of the party. It also elects the executive officers (members of the political Bureau). In the Ivory Coast the Congress meets once a year in ordinary sessions. In Guinea it meets every four years, and in Mali it meets every three years. The Congress may be convened in extraordinary sessions either at the instance of the political Bureau or at the request of more than half of its members.

1. Cf. Sy, op.cit. pp.149-150.

In the Ivory Coast the Congress is composed of delegates from the branches (sous-sections). In Guinea it is composed of the members of the political Bureau and the members of the federal bureaux (from the regions) who are statutory members. In Mali also it is composed of the members of the political Bureau, of political commissioners and of branch delegates.

Next to the Congress there is the political Bureau which is the supreme executive organ. The decisions of the Congress are executed by this organ, and because of its permanence and size, it is, in reality, the most important organ of the party. In the Ivory Coast there is an executive committee (comité directeur) consisting of thirty-five members which delegates the power to the political Bureau to assume "the direction of the policy of the party during the intervals between its meetings. The political Bureau, in turn delegates to the secretary general "the administration of the party and gives him wide powers of convocation and of decisions to that effect."¹ The secretary-general's principal function

1. Cf. Ph. Yace (secretary general of PDCI) in *Fraternite* no. 119 of Aug. 1961 p.7.

is to control the activities of branch secretary-generals (sous-sections) who exist in every administrative subdivision of the country. The political Bureau is composed of an honorary president (at the moment Houphouët Boigny), a secretary general, a technical adviser on political matters, an organisation secretary, a treasurer-general, assistant-treasurer, secretary on administrative affairs, press-secretary, propaganda secretary, secretary for mass education and one simple member. The comité directeur consists of the members of the political Bureau plus branch secretaries-general, of deputies, of ministers, of prefects, of councillors (local) and of mayors. At the branch level there is a secretary general, a treasurer and six members elected by the branch assembly. The branch secretaries general are agents of execution of the policy of the political Bureau.

In Guinea, the political Bureau, which is also the supreme executive organ, consists of fifteen members elected for four years by the Congress from amongst outgoing members (of the Bureau) and members of the bureau of federations. The Bureau implements decisions of the Congress and of the 'national council of the revolution' - a body which next to the Congress is a high organ and

which holds meetings in between the meetings of the Congress. The Bureau meets at least once a month and is convened by the secretary general.¹ It has four commissions:- (i) Commission on political control and organisation, (ii) Commission on external relations, presided by the minister of foreign affairs; (iii) economic commission, presided by the Minister for economic development; (iv) social commission, presided by the minister of health and social affairs. The members of the Commissions are all members of the Bureau. The commissions are controlled by the secretary-general, president Sékou Touré, who is assisted in this task by the permanent secretary of the political Bureau. There is also an executive commission consisting of the secretary-general, the presidents of the four commissions and the permanent secretary of the Bureau. The executive commission co-ordinates the activities of the commission and prepares the meetings of the Bureau. The permanent secretary of the Bureau acts as the centralising agent for all informations coming from all branches of the party, and he regulates all conflicts arising between branches.

1. President ~~Ahmed~~ Sékou Touré is the secretary general.

At the next level of organisation the federations have a bureau of seven members of whom six are elected¹ and the seventh is the governor of the region, and is an ex officio member. It is elected for three years, and supervises the implementation in the region of the decision of the higher organ of the party.

A similar organisation exists in Mali. The political Bureau, which consists of eighteen members, is the supreme directive organ. It consists of the secretary-general, the political secretary, secretary for organisation, secretary for administrative and judicial affairs, secretary for economic, social and cultural affairs, press secretary, the treasurer-general and his assistant, and ten commissioners,² of whom two are responsible for external relations, two for regulating conflicts, two for accounts, two for the youth, plus one commissioner for women affairs and one for trades union matters. The president of the government and the president of the national assembly are ex-officio members of the political Bureau.² The Bureau, among other functions, directs and controls the activities of

1. one of the six must be a woman. The national Bureau must also have at least two women members. Cf. Sy op.cit. pp.156-7.

2. Cf. Art 6. statuts.

all elected members. Within the framework of the powers of the Bureau, the secretary general acts as the guide of the party.¹ He represents the party in all places at all times and ~~engages~~^{pledges} its responsibility with the agreement of the Bureau. He ensures the respect and the maintenance of the party line and ~~to~~ the correct execution of the party programme. He can call meetings of the Bureau and he directs the correspondence on its work. He can delegate his function to the political secretary, who is next in line to the secretary general in the Bureau, and who is in charge of the general political education of militants.² The other secretaries are in charge of the matters which correspond to their title.³

In Mali a great deal of emphasis is laid on collective leadership as a concomitant of the organisational principle of democratic centralism. As the party weekly *L'Essor* has pointed out "for our party ~~that~~ collective combat supposes collective responsibility at the base and collegial responsibility at the top."⁴

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1. Cf. Internal regulation of the party - Travaux du VIe congrès de l'USRDA p.2.
 2. In the 6th Congress it was the political secretary, Mr. Idrissa Diarra, who presented the main report. cf. VIe Congrès de l'USRDA, Bamaka, les 10-12 Sept. 1962 pp.13-140.
 3. The secretary general of the USRDA is Modibo Keita, president of the government.
 4. cf. *L'Essor* April 2, 1962.

Again the political secretary of the party has declared:

"whatever may be the intrinsic value of our leaders taken individually; the decisions which they might be led to make alone are likely to be marred with errors. We can never emphasise sufficiently the necessity and efficacy of teamwork. It is the only sure way to avoid errors, as much as possible to choke off the politics of personality; and to assure the continuity of the party."¹

In this connection it is worth mentioning that the prestige and popularity of Modibo Keita is used a great deal for party and government work. But the party is always careful, as this quotation shows, to preserve the image of collective decision-making which is essential to unity.² This attitude and practice, together with the history of the party, explains the party's supreme position in Mali. The closeness of the party to the people results in the primacy of the political over the administrative. Implicit in such a primacy,

1. Cf. Idrissa Diarra, rapport d'organisation. 1955 USRDA Congrès.

2. E.g. the minister for Interior, Information and Tourism lauded Modibo Keita as a giant of revolutionary thought and action but went on to add that Mali will triumph under the guidance and direction of the National Political Bureau. Cf. L'Essor, Jan. 27, 1964.

however, is an inherent tension between party and government, between politicians and administrators.¹

So far, apart from a few arrests, manifesting conflict, harmony seems to reign between party and government.

The national political Bureau executes ^{the} policy of the party through the party machine stretching from the national capital down to the lowest party branch. But this does not mean that the machine is a one-way traffic. At the local levels there are bodies which deliberate in local matters with the general party policy in mind. At each level there are committees and executive officers. The village committees are of great importance, because they establish contact with the village chiefs (if any) or elders and with the village communities in general; and, in co-operation with these, they sort out village affairs and implement party decisions.

There are also parallel organisations which are associated to the party; such as ^{the} womens' organisation, youth organisation, trade unions and war veterans.

1. This will be examined in the next chapter.

These bodies can mobilise their members in a manner appropriate to the character of their organisations but in accordance with the general principles of the party.

The party can then reach every section of society through its branches as well as through affiliated organisations. These parallel organisations are particularly useful whenever party apathy sets in for any reason.

The vitality of a party depends on the vigorous participation of its members. This in turn depends on the history of the party, the services it has rendered and continues to render to its members, and the organisation and relationship of the leadership to the members. To take the example of the Union Soudanaise RDA (USRDA) of Mali, as Ruth Schachter^{ch} has pointed out, the party's services to the masses together with organisation, have been of great importance in its growth during the 1950s and in the consolidation and maintenance of its position after independence. And after independence party activists have been directed toward providing leisure activities for the people, solidifying party support, laying its bases for national economic development. Leisure time activities

organised by the party or its auxiliaries include sporting events for which there is the comité national des sports controlled by the party; local and regional folklore troupes and annual national competitions and prizes for the best performance; and national youth week or Women's day etc. They also include adult education and extension services of various kinds. Most party services in the economic field are included in the five year plan (e.g. the 1961-5 plan).⁴

(ii) Relation to government

In spite of all the similarities in the principle and organisation of the parties in the three states, it has been suggested as already mentioned that the place of the party in the government in the three countries is not the same. In the Ivory Coast the PDCI has ceased to define the general guide lines of the party, since the party congress of 1959; and the political Bureau plays on the role of counsellor to the president of the republic. As the Congress does not meet the president of the republic (honorary president of the party) defines the party programme which becomes the

same as the government programme.¹ In effect, president Houphouët-Boigny has replaced the Congress of the party in the task of general orientation of the government policy and action. In spite of claims to the contrary made by the party officials of the PDCI, in fact, the primacy of party over government is not the rule in the Ivory Coast. The primacy of politics has been abandoned. Nkrumah's dictum "seek ye first the political kingdom, and all things else shall be added unto you", has its antithesis in Houphouët-Boigny's philosophy. He has said to his people: "if you don't want to vegetate in bamboo huts concentrate your efforts on growing good cocoa and good coffee. They will fetch a good price, and you will become rich."²

In practice of course both Nkrumah and Houphouët-Boigny departed from their dicta. The former knew that man does not live by politics alone, as the latter knew that man does not live by bread alone. He paid attention to political organisation. The difference between the PDCI and the USRDA is that the PDCI has become a willing instrument of Houphouët-Boigny's

1. Cf. Sy, op.cit. pp.264-5

2. Cf. A. Zolberg, op.cit. p.151.

personal power, just as the CPP in Ghana became a willing instrument of Nkrumah though with a different purpose. This manifests itself at various levels. The secretary general of the PDCI is also the president of the National Assembly of the Ivory Coast. This fact reinforces the predominance of Houphouet-Boigny over the National Assembly through the party. Again, although in appearance, the party nominates the candidates to the National Assembly, in fact it is Houphouet-Boigny who has the last word after consultation with the political Bureau.¹ In theory the candidates are chosen by the secretaries of the PDCI and by such other major groups that participate in the election arrangements. Then the list is submitted to the political Bureau for final approval. In practice the inner circle controlled by Houphouet-Boigny, retains control over the entire process. Local party branches are informed of the number of places their region will have and are asked to draw up a list of candidates for these places in order of preference. In 1960, for example, the general secretaries of the party assembled in Abijan to prepare the lists, heard Houphouet-Boigny's recommendations and then approved a

1. Cf. Sy, op.cit. p.170.

motion to give him and the political Bureau full authority to draw up the ^{list} ~~states~~.¹

The situation has been aptly summarised thus

"....in the representative democracy of the Ivory Coast, the prestige of one man radically transforms the classic theory. It is no longer a question for the electors to choose representatives who are able to decide and act. General elections serve only to show the confidence of the people for one man."²

The nature of the relation of the PDCI to the government in its parliamentary aspect may be seen clearly in the unanimous approval of the Bureau and the commissions of the National Assembly which was proposed by the party spokesman on Nov. 27, 1960.³ Again in matters of arbitrating conflicts between ministers and any parliamentary commission, a minister would normally refer the matter to the president of the republic who may submit the question to the political Bureau of the party. If the party spokesman in parliament announces that the Bureau has decided in such and such a way, all would submit to this decision. But the party does not normally intervene in technical matters, which are

1. Cf. A. Zolberg, op.cit. pp.272-4.

2. Gonidec quoted by Sy, op.cit. p.111.

3. Cf. Fraternite No. 87, 16 Dec. 1960, p.2.

normally worked out between the other institutions.

The party intervenes only in political matters, or in matters which would have deep political implications.

In Guinea and in Mali, the party appears to be pre-dominant in practice as well as in theory.

A distinction must be made between general questions of policy in which the party in both cases is predominant, and matters of day-to-day administration in which the governments are in firm control. Once the Congress has established the general policy as a guide line for action it is left to the government to follow those guide lines and implement them. The dynamics of executive action connected with the implementation of the general policy involves questions, the details, volume and technical complexity of which necessarily leave them to be dealt with by the government bureaucracy. But the chief executives of the two governments who are also secretaries-general of their respective parties supervise the execution of the party politics. The merger of the office of head of the party and government in the hand of one man may partly explain the function of the party. One value of such^a merger is that it ~~avoids~~ preserves the primacy of the party, making it impossible for the chief executive to emasculate it by subordinating the chief of the party to him. It also avoids conflict, preserves

unity, and obviates the problem of succession, which is one of the problems that is critical in personalised systems.

With reference to the distinction drawn between the Guinea and Mali case in respect of the relation of the party to the executive it must be said that in Guinea the political Bureau, which the secretary-general controls, does not in fact dictate ^{to} him or ^{to} his government, but rather leaves it to him to see to it that party militants accept the decisions of the government.¹ It is also true that the manner in which the party policy and programme is worked out shows a collaborative relationship.² But this is not peculiar to Guinea; other parties follow the same procedure. Also the content of the secretary-general's report and the manner of his presentation is not necessarily a sound guide on the nature of the party-executive relationship. In Senegal, for example, the report of the secretary-general of the UPS, Leopold Sédar Senghor, to the 5th Congress shows the same approach as that of Sékou Touré. The same is true of the report of Idrissa Diarra, the political secretary of the USRDA of Mali, to the 6th Congress.³

1. Cf. Sy, op.cit. p.165

2. E.g. the Congress passes resolutions on the basis of propositions contained in the report presented by the secretary-general who as chief executive would give a government orientation to his report - Cf. Sékou Touré *La Révolution Guinéenne et le progrès social* t VI (édition special) Conakry s.d. (1963).

3. Op.cit.

In each case an exhaustive examination of the past performance of the government and the party is presented. Problems are analysed and solutions suggested in outline on economic, social political and cultural matters. The report cannot be too critical as it is presented by the leader of the government. On the other hand there is a remarkable depth of self-examination. The report of President Senghor to the 5th Congress of the UPS concentrates its attention on the economic and development plan and a reappraisal thereof. Senghor puts it thus: "the plan is, must be, during the next four years, the principal object of our action as well as of our pre-occupations, Because planning is a method of action which is indispensable to all those who espouse not only socialism but more generally the economic effectiveness in social justice...."¹

The relation of the political Bureau to the executive in both Guinea and Mali is one of co-operation and understanding. But certain differences exist which have given rise to the suggestion that whereas in Guinea the relationship is collaborative, in Mali it is one in which the Bureau is predominant.

1. Report to the 5th Congress, p.1.

In Guinea, after the 7th Congress, the role of the political Bureau seems to have been reduced to that of confirming the decisions prepared or even taken by an executive commission of five members consisting of the secretary-general (chairman), of the presidents of the technical commissions of the Bureau and of the permanent secretary.¹ Moreover, the commissions, it will be remembered, function under the direction and supervision of the secretary-general who is helped in this task by the permanent secretary of the Bureau.² Hence the relation between the Bureau and the executive is tightened, through the agency of the executive commission of the Bureau in which both party and government meet. The political Bureau, which meets once a month, seems to be a permanent organ of control and consultation, rather than an executive organ. In between its meetings the government executes the directives of the party congress and the directives of the Bureau. The president of the republic in ^{consulting with} ~~connecting~~

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1. The presidents of the technical commissions in 1965 were all cabinet ministers. Cf. Sy, op.cit. p.179.
 2. This part is occupied by Mr. Léon Maka who is the president of the National Assembly. The relation of the executive, the party and parliament is thus neatly tied up under the control of the secretary general.

the Bureau benefits from the authority of the party which in the revolutionary ideology of Guinea is the motivating force of the political system. The president acts as the organic link between party and government, informing the Bureau on the actions of the government and notifying ministers about the decisions of the Bureau. But the Bureau in no way replaces the council of ministers, as an executive organ of state.

The powers of the president of the republic (and secretary-general of the party) are exercised in Guinea in a manner which conveys a picture of a much more tightly held governmental and party executive authority. In applying the general guide lines laid down by the Congress the secretary general can in the name of the Bureau push ahead his ideas unquestioned. Thus on August 3rd, 1963, the Council of Ministers approved a proposal of president Sékou Touré, concerning measures for controlling financial and commercial transactions entered into abroad. He authorised Mr. Diallo Saifoulaye, who was in charge of administrative and financial matters in the Bureau, to prepare a decree creating an inter-ministerial commission which would study all agreements concluded with foreign

countries. This decision was an application of a decision of the political Bureau which was made in accordance with the economic resolution of the sixth Congress of December, 1962.¹

In Mali, on the other hand, the party directs all the institutions of the State. The political Bureau plays a vital constitutional, governmental role. It holds weekly meetings to supervise the activities of the executive and the legislature. The president of the government presides at these meetings of the Bureau. Party and government thus appear to be more united, but the Bureau preserves a vital and predominant role. It is guided by the general policy laid down by the Congress. A reading of the Sixth Congress of 1962 shows the wide range of such policy. As an illustration we will cite an extract from the economic field. The Congress gave an imperative mandate to the Bureau and to the government on the national plan

"to tackle economic ~~decentralisation~~ immediately and vigorously; to establish new economic institutions rapidly turning and developing... commercial centres in a socialist planning based on African realities; to use every means

1. Cf. Horoya, No. 296, August 10, 1963. p.1.
cf. also Sy, op.cit pp.179.

to create infrastructures of railways, road, water and air (transportation) in accordance with the needs of the country; to intensify the agricultural production to increase internal consumption and the exploitation potential; to use every means to establish industries of transformation with a view to avoiding wasteful costs; to intensify research on mineral resources in order to make Mali a state fit to be a member of modern Africa; and to direct and control effectively the economy of the country by the state which will take more active part in it notably by the creation of a national office of external commerce and the intensification of the co-operative sector."¹

The activity of the party in Mali, as in Guinea, is guided and directed by the political Bureau. But there is more massive participation in Mali. At the top the Bureau acts as an authentic counsellor of government. At the base the administrative authorities do nothing without the support of the responsible party officials. The supremacy of political over technical questions is a firmly established principle. The membership of the Bureau itself is significant in this respect. Out of the nineteen members elected by the 6th Congress, only six were ministers in the government. Although these six occupy an important place in the Bureau, the rest have numerical preponderance

1. Cf. VIe Congrès de l'USRDA - "Résolution économique et sociale in'Essor No. 170, Sept. 1962, pp.1-3.

and can thus perhaps subordinate the executive to the party.¹ It is of interest to note that the Mali government, formed soon after the end of the 6th Congress on Sept. 14, 1962 was so formed by the political Bureau, on the proposition of the secretary general, (who was an outgoing president of the government). The investiture by the national assembly took place three days later. The dual role of the secretary general is revealed in his presentation speech made to the national assembly.

"What I can tell you" he declared, "is that we have the feeling that this new cabinet which has just been formed as well as the departments which are more balanced than those of the former government will allow the new cabinet to play effectively its role of realising the development plan of the republic of Mali in the best conditions."

Thus far he spoke as the new chief executive. Then he added

"And what I can add, and I say this, in the name of the national political Bureau, is that these measures which we have just taken are the prelude to other courageous vigorous and necessary measures in the policy of readjustment which could not operate in the period between the two congresses."²

1. The Guinea political Bureau, by contrast, is largely dominated by members of the government.

2. cf. Sy, op.cit.pp.190-1

How does the secretary general in practice fulfil this dual role in such a closely co-ordinated work between party and government? The weekly meetings of the Bureau take place on Tuesdays at which date the secretary general informs the Bureau of the work of the council of ministers at the previous meeting (which is held every Thursday). The secretary general decides on matters discussed in council which are important enough to be presented to the Bureau. But if the Bureau has made a decision on a subject which then comes to be debated in council, the council's debate would centre on technicalities and on details of implementation. The decision of the Bureau must prevail. In this way the party supremacy can be exercised every week. The president of the government transmits the decision of the Bureau to the appropriate department for execution. If a presidential decree is needed for example, he would (as secretary general) ask the secretariat of the Bureau to prepare it. In his absence the political secretary of the party (who is second in line in the party hierarchy) presides at the Bureau and he works in co-operation with the acting president of the government. All decisions of the Bureau reached in his absence are binding on him when he resumes

work.¹ This constant link between the Bureau and the council of ministers is institutionalised. This can be seen clearly in the regular publication of the decisions of the Bureau and the equivalent decision of the Council of Ministers. They both appear side by side regularly in L'Essor, the official organ of the party.

As an example of the extent of the Bureau's powers we will cite one decision among many. In its meeting of Jan. 22nd, 1963, the Bureau, approving the recommendations of the national personnel office, decided to modify the status of the Governor of the Bank of the Mali Republic, raising his rank to that of a minister. The president of the government presented this decision to the Council of Ministers at its next meeting on Jan. 24, and the proposal became law on Feb. 1, 1963.²

The Bureau issues circulars to all the sections of the party, which are binding on all party militants, be they party officials or civil servants. The circulars are signed by the secretary general who in this respect

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1. Cf. statement to that effect given by the secretary-general of the government of Mali (who is the administrative assistant of the president) - reported in Sy, op.cit. p.191.
 2. as No. 31 P.G.R.M. cf. Sy, op.cit. pp.191-2.

acts in both capacities, as chief executive and as party chief. A typical circular of importance is one dated Nov. 13, 1962 on the subject of "economic and fiscal fraud" (or evasions). It was published in l'Essor, on Nov. 19 in the name of the government and the party. In it the secretary general began by saying that while during colonial times such an offence was understandable because it operated against a foreign oppressor, in a free Mali it was an anti-social and anti-patriotic act and must be punished as such. He then proceeded to announce the establishment of a special administrative organ or a committee in each governorate. This body would administer export controls in a manner stated in the circular. All party militants are also enjoined to be vigilant against "economic offenders", for "each militant of the USRDA, must consider the denunciation and discovery of offenders as a political task."¹

The organisation and relationship of party and administrative organs at local levels is also marked by a unity of purpose. The sixth congress of the PDG of Guinea condemned the duality of party and administrative organisation at the local level as constituting

1. Cf. Sy, op.cit. pp.193-4.

a threat to the unity of the state. Then the seventh Congress decided to transfer the power of village councils to village party committees after which there has been a unity of party and administrative function at that level. Again ^{altogether} ~~although~~ at the higher level (arrondissement and regions) the duality exists, in practice the administrative officials at these levels consult the party officials on all important questions. The party is thus unified at the local level with administrative organs.¹

That the logic of the one party rule seems to lead to the abolition of duality or plurality not only of this kind but of regional government can be further illustrated by the brief post independence history of the Ghana regional assemblies. They were established in 1958 and abolished in 1959. Dr. Nkrumah ~~ex~~claimed: "It would be wasteful, cumbersome and although unsound administratively, to have in the proposed local government structure, another tier, in the form of regional assemblies....."²

1. Cf. Sy, op.cit. pp.180-1; 194.

2. Ghana Government White Paper on Regional Constitutional Commission, 1958.

The CPP, however, was neither as thoroughgoing in its village mass organisation nor, it seems in retrospect, ideologically as firmly based as was the USRDA of Mali, for example. It is easy to find faults in a party that has failed. But it seems clear that although the CPP appeared to have started as a mass party and continued to present such a front, it could not in reality have been a genuine mass-party as events proved. Its "control" of local administrative organisations did not in any way amount to a predominant position of party ~~over~~ administration. A close observer of the Ghana political scene saw in the abolition ^{of} the power of regional authorities ~~as~~ "measures" ~~to~~ taken to "emphasise and augment the power of the party in the regions."¹ Others, being wise after the event, claim that these measures were designed to secure Nkrumah's personal control over developments throughout the country. It is further claimed that it mattered very little whether the newly appointed regional commissioners were all members of the CPP.²

"Aside from the party leader, there existed no centre, no source of power, controlling their conduct..."

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1. Cf. Dennis Austin - Politics in Ghana, 1946-1960 (London & New York. Oxford U.P. 1964) p.364.
 2. Cf. Henry L. Bretton. 'The Rise and Fall of Kwame Nkrumah - A Study of Personal Rule in Africa (London 1967) p.46.

He (Nkrumah) selected and appointed the commissioners, remained personally in touch with them, controlled their emoluments, and decided when and on what grounds they were to be disciplined."¹

The parties in Guinea and Mali, as in most African states, started as ideological parties, not as parties of interest. The movement for independence had involved, it is true, a general national interest. But this was a far cry from the sort of self-interest that motivated many of the historic parties in Europe and America. Some of the African parties seemed to have deviated from their "ideological" line as sketched in their original aims and objectives. The shift of authority from the Congress of the PDCI to president Houphouët-Boigny is one example. Why has the PDCI not resisted this? One explanation may be that the real power base of Houphouët-Boigny was the plantation owners and workers union which might be described as an interest group that has contributed to a process of "ideological discharge" of the PDCI. ^{Perhaps} ~~However~~ one conclusion may be hazarded as being generally applicable: the national leader must earn and retain the confidence of the party organisation more than that of the legislature.

1. *ibid.* This assertion is not elucidated by illustrations.

The party is therefore the institution which must be mainly relied on as providing means of control over the executive.

B. Other parts of Africa

Turning to other parts of Africa, we find similar patterns of developments. For example, to take one pattern, Dr. Hastings Banda, the president of Malawi, has turned the Malawi Congress Party into an instrument of personal power. He is the life chairman of the party, and the central executive of the party is wholly selected by him. The chairman has concentrated ^{the} power of dismissal of members entirely in his hand. The party has a highly centralised organisation and its branches must remit to the party central office all funds however collected.¹ Dr. Banda, does not rely on the party alone as an instrument of personal power. He has built a private army out of the "Young Pioneers".² The Young

1. cf. H. Chipembere, 'Dr. Banda's Opposition in Exile', The Guardian, 7.7.66. The author writes notably: 'I was myself an enthusiastic advocate of it (one-party government) until two years ago, when as a result of experience within Malawi and observations of trends in other African states the system's susceptibility to abuse became clear.' The author was a minister in Dr. Banda's cabinet until 1965.

2. This consists of green-shirted youths who form a movement that was originally modelled on the youth movement of Ghana, also known as young pioneers and associated with the C.P.P.

Pioneers are trained by Israelis on a military basis - drill, modern agriculture methods, homecraft etc. The military drill is designed to instil implicit obedience to superiors. After completion of the training the Young Pioneer goes into the village to work with the rural inhabitants showing them how to improve their standards of living. The Young Pioneers enjoy parity with the police and the army. They enjoy powers of arrest, while the police have no powers of arrest over them. Dr. Banda is their commander-in-chief.¹

The practical result of all this is that the MCP lost whatever original ideological pretensions ~~were~~ claimed for it, and its machinery, and that ^{of} the Young Pioneers ~~are~~ used as an instrument for suppressing all criticism and for the perpetuation in power of an individual and a clique around him. Nor does Dr. Banda conceal this fact behind "ideological" pronouncements. In the space of two years he has got rid of six of his original cabinet of seven ministers for opposing him on such questions as Africanisation of the Civil Service, policies towards Rhodesia, Portugal and South Africa.

1. In 1966 there were 1,163 trained Young Pioneers cf. The Yorkshire Post 6.1.66.

The clearest evidence of Dr. Banda's personal rule is his decision in ~~his~~ opposition to OAU policy and the opinion of his ministers to accept help and advice from South Africa. For example the Sucoma sugar mill project near Balantyre, has been financed by the Industrial Development Corporation of South Africa¹ which stipulated that at least sixty per cent of the material used in the construction of the mill had to be of South African origin.¹ The MCP was used as the original power base. The concentrated power of the party chairman enabled him to build up a core of following which mobilised public opinion for him as a national leader. As soon as the members of his party who, next to him, were the most important were removed, Dr. Banda could no longer rely on the party or the government apparatus alone as a source of power. Hence the para-military 'Young Pioneers'.

The Ghana experience has some points of comparative interest to that of the MCP. But Dr. Nkrumah never abandoned the original ideological basis of his party, even though the CPP was further removed from the masses in 1966 than he was ready to believe. As two students of the subject have written:-

1. South African Financial Gazette 3.6.66. This paper describes Banda as "Realist Banda."

"The most obvious change from the 1950 Positive Action days was that the CPP no longer behaved like a mass political party. Instead it combined a preference for "summit" conferences with the style of a United States political machine. The CPP did not work through the trade unions or involve the masses in its battles in any way;Rather than organisation, agitation, and political education aimed at generating power from below, the CPP preferred or felt forced to try to exert influence from the top down by necognition. And when negotiation failed it resorted to administrative repression. The CPP's behaviour during and after the third and last general election in 1956 illustrates its increasing isolation from its popular base."¹

The CPP at the outset relied on young men for support. But as it tried to form a broad coalition against the colonial administration, it felt unable to organise an attack on traditional and other forces which later became the centre of disaffection. By 1956, the CPP no longer based itself on the young men in the rural areas. It even attempted to outbid the opposition for the favour of the chiefs, working through them in the rural election campaigns.² It would also adopt American-style "pork-barrel" campaigning, often holding out to a local council the promise of a generous development grant or threats of its withdrawal.³ Soon after independence, in March

1. B. Fitch and M. Oppenheimer 'Ghana: End of an illusion (New York & London) 1966) p.73.

2. *ibid*, p.77.

3. Cf. Denis Austin, *op.cit.* p.335.

1957, "disturbances" broke out in the Trans-Volta Togoland area, the new government had to use troops and police to suppress the disturbances^{at}, which several people were killed. A few weeks later an anti-CPP movement sprang up in Accra, from among unemployed Ga-workers and small merchant classes. They called themselves the Ga Standfast Organisation. They demanded jobs, better housing and lower food prices.¹ The result was the passage of the Avoidance of Discrimination Bill which prohibited all tribal, religious and regional parties. In these circumstances, shaken by the mass rallies in Accra and the armed revolt in Togo, the CPP government which was still in command of all levers of power, began to use the state apparatus to prevent further erosion of its narrow popular base.²

And in 1958 the Preventive Detention Act was passed. Under it the Executive could "order the detention of any person who is a citizen of Ghana if satisfied that the order is necessary to prevent that person acting in a manner prejudicial to the security of the state."³ The administration of the Preventive

1. Their marches and rallies, which numbered in tens of thousands, apparently created quite a shock in the government forcing CPP ministers to drive their cars down the side streets of Accra. cf. Fitch and Oppenheimer op.cit. p.79.

2. ibid.

3. Clause 2, section 1 of the Preventive Detention Act, 1958

Detention Act between 1956 and 1966, which is associated as much with the CPP as with Dr. Nkrumah, does no credit to either.¹ In actual fact even some of the bitterest critics of Nkrumah agree that he "displayed a sense of moderation and humane consideration in the exercise of his ever-growing power...."² The Ghana experience has an added significance in that its outcome has been conclusiveⁱⁿ one sense, demonstrating the point that a party which has no popular basis, or which has abandoned such basis, could not be relied on to support a government in distress. Whether the Malawi Congress party will go the way of the CPP is difficult to say. But if the president of Malawi relies more and more on the Young Pioneers for his political military balance, it is doubtful whether the MCP would act differently in the event of an armed challenge.³

We now turn to Tanzania and the UAR, where some interesting experiments have been taking place. The two cases have been chosen for their intrinsic merits as well as for the care with which they were undertaken by the leaders of the two states.

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1. Under it the Executive could remove out of circulation without publicity any person regarded as being a threat to the "security of the state." It has been claimed that up to 2000 people were detained between 1957 and 1966.
 2. Cf H.L. Bretton, op.cit. p.48.
 3. Cf. Chap. Eight on the Ghana coup.

In Tanzania president Nyerere set up a commission in January 1964, to study and report on the establishment of a democratic one-party state. The commission's report was later adopted almost in its entirety and the constitution was modified accordingly.¹ It is interesting to note that two members of the Commission were sent abroad - one to Guinea, another to Yugoslavia - to study the systems in these respective countries.²

On the character and role of the party the Commission had this to say:-

"In a country where any number of political parties are permitted to function the basic character and role of a party can be left to be settled by the party managers. They have no constitutional significance. If the party managers are obtuse or injudicious or intolerant they will suffer the consequences of unpopularity and exclusion from power. In a one-party state, however the situation is very different. Decisions affecting the basic character of the party have a deep constitutional significance, since they may well determine the extent to which a citizen is able to participate in the process of government..... In a one-party state the threat, actual or potential, from an opposition group disappears. This means that the party's survival no longer depends on mass membership or affiliation. From this it is sometimes argued that the party should see itself

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1. Cf. Report of the presidential commission on the establishment of a democratic one-party state - Dar-es-Salaam, 1965.
 2. The Commission acknowledges the usefulness of this report, Cf. p.7.

in the new context as an elite group, a minority ideologically dedicated who provide from above the leadership necessary to motivate the inert mass of the community. Whatever practical advantages it may have in terms of dynamic leadership; we decisively reject this view of the party and its role.. We do not see TANU as an elite but as a mass party through which any citizen of goodwill can participate in the process of Government."¹

The other experiment which is peculiar to the history of the nation concerned is that of the Arab Socialist Union. Egypt exemplifies some of the African States where there was no serious ethnic or regional problem, but where there were other problems. Prior to the revolution of 1952² there was an endemic political malaise which was rooted in the economic and social structure of the country. There was the ever growing power of the big landlords whose holdings manifested the most serious inequality in the distribution of land-ownership and the increasing impoverishment of farmers and the declining wages for agricultural workers. There was also the faltering industrial activity which had "suffered so much from monopolistic pressures, widespread exploitation, lack of qualified entrepreneurs, scarcity

1. Report of the Commission, op.cit. p.15.

2. cf. Chapter 8 below.

of capital and limitation of markets."¹ The new regime faced these problems, and the attempts it made to solve them culminated in the National Charter of June 1962 and the constitution which was based on it. The National Charter provides for the creation of the Arab Socialist Union which, according to the preamble of its statute "represents the socialist vanguard which leads the masses, expresses their will, directs national action and undertakes effective control of the march of such action, within the framework of the National Charter." It was envisaged that the peasants, armed forces, workers, intellectuals and national capitalists could all join in one alliance. There is thus on the face of it a similarity of approach to membership of the party in the post National Charter situation of the U.A.R. and in Tanzania before the Arusha Declaration of 1967. TANU was considered to be a "nationalist movement which is open to all - which is identified with the whole nation."² Nevertheless adherence to the principles of the party is a condition for membership in both cases.

1. Cf. Mohamed Ali Rifaat, 'The Egyptian Experiment'. Dec. 15, Paper 33rd Study Session - International Institute of differing civilisations - (Palermo 23-27 Sept. 1963) p.3.

2. Cf. J.K. Nyerere, op.cit. pp.24-5.

Since these principles exemplify the "ideological" basis of many African parties, we will set them out briefly here:-

The aims and objects of TANU as set out in the Arusha Declaration (1967) are:-

- (a) To consolidate and maintain the independence of this country (Tanzania) and the freedom of its people;
- (b) To safeguard the inherent dignity of the individual in accordance with the Universal Declaration of Human Rights;
- (c) To ensure that this Country shall be governed by a democratic socialist government of the people;
- (d) To co-operate with all political parties in Africa engaged in the liberation of all Africa;
- (e) To see that the Government mobilizes all the resources of this country towards the elimination of poverty, ignorance and disease;
- (f) To see that the Government actively assists on the formation and maintenance of co-operative organisations;
- (g) To see that wherever possible the government itself directly participates in the economic development of this country;

- (h) To see that the government gives equal opportunity to all men and women; irrespective of race, religion or status;
- (i) To see that the government eradicates all types of exploitation, intimidation, discrimination, bribery and corruption;
- (j) To see that the government exercises effective control over the principal means of production and pursues policies which facilitate the way ^{to} the collective ownership of the resources of this country,
- (k) To see that the government co-operates with other states in Africa in bringing about African unity;
- (l) To see that the government works tirelessly towards world peace and security through the U.N.O.

The main objectives of the Arab Socialist Union, as defined by its statute, are to "^{realise} ~~realise~~ sound democracy" and to safeguard the following guarantees which have been embodied in the National Charter:-

- (a) Minimum representation, i.e. 50%, for workers and farmers in all popular political formations at all levels;
- (b) Right of criticism and self-criticism;
- (c) Principle of collective ownership;
- (d) Co-operative and labour union formations;
and
- (e) Gradual transfer of the authority of the state to elected councils.

In the pursuit of these objectives the Arab Socialist Union is charged with duties which are expressed thus: - "To become a positive power behind the revolutionary action;

- To protect the principles and objectives of the revolution;
- To liquidate the effects of capitalism and feudalism;
- To fight against the infiltration of foreign influence;
- To fight against the ~~re~~turn of ^eraction which has been eliminated;

- To fight against the infiltration of opportunism;
- To resist passivity and deviation;
- To prevent haphazard work in National action."

These aims of the parties in the two countries reflect the aspirations of their respective people as expressed through the leadership of the parties (and governments). For historical reasons there are differences in some of the declared objectives. For example in the U.A.R. a special emphasis is laid on the vigilance against the return of reactionary forms which were removed by the revolution; on the other hand the basic aims of constructing a democratic socialist society and maintaining independence is a common feature in the aims of both parties, as it is of most African parties. The summary reproduction of these aims of TANU and the Arab Socialist union may serve as a general frame of reference of the aims of other parties on the basis of which governments are charged with the duty of directing the affairs of their states. As it was pointed out in Chapter One there are some differences of approach. In Mali and Guinea, for example, the parties set out

for themselves the task of radical reconstruction of their societies, and the parties proposed to play the role of such reconstruction along Leninist lines. By way of ~~a~~ contrast to this, mention was also made in Chapter One of the approaches of Presidents Nasser, Nyerere and Senghor. It is worth noting that the U.P.S. of Senegal has the following provision in its statute as one guide of its action:-

"The U.P.S. tends to the suppression of all forms of oppression of class or caste through the conquest of political power, the socialisation of the means of production and exchange, the establishment of a communal society (société communautaire) and of a true democracy to the service of the people. That is to say, that the UPS draws its inspiration from the socialist method, but it means to integrate into socialism, the cultural values of black Africa."¹

Nor was this the primary task assigned to an African political party. President Habib Bourghiba has explained the role of the party in a transformed function from struggle for freedom to the struggle for development:

"The.....difference is that instead of the policeman or the foreign flag that wounds our dignity, it is the spectacle of misery, ignorance and under-development..... We are mobilising ourselves for a struggle more difficult than that for political freedom, because it calls for the combined use of both our material and our human resources. It forces men to master ~~their~~

1. Cf. Statuts de L'Union Progressiste Senegalaise, article 5.

their instincts and their egocentricism, to transcend themselves, raising themselves, raising their vision and their action to the level of the national interest. The battle is first of all a conquest of self; it is impossible to build on hatred of others. Our goal is to enlist the co-operation of every citizen and to build a nation which is neither the game preserve of the bourgeois nor the dictatorship of the prolerariat."¹

He may ^{well} have spoken for many African political leaders.

As for the structure of the parties, the role set out for the party to play dictated a hierarchical and centralised party machine differing from the USRDA of Mali, and the PDG of Guinea perhaps in emphasis and in symmetry only. It is clear that in Tanzania for example, ~~that~~ the idea of a party as a national movement embracing the entire population and expressing their aspirations has been abandoned in favour of a more tightly controlled party organisation with a strict scrutiny in membership recruitment. The Arusha declaration of January 1967 puts the matter succinctly thus:

"Since the founding of the Party greater emphasis has been put on having as large a membership as possible. This was justified during the struggle for independence. Now, however, the national executive committee feels that the time has come for emphasis to shift away from mere size of membership to the quality of membership. Greater consideration must be given to a member's commitment to the beliefs and objectives of the Party, and its policy of socialism."²

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1. Habib Bourguiba, 'The Tunisien way' Foreign Affairs (April 1966, pp.480-8.
 2. The Arusha Declaration and TANU's policy on socialism and self-reliance' - (Dar-es-Sallaam, 1967) part 4.

It is now required of all concerned to observe the membership clause of the party constitution closely. Where it is thought unlikely that an applicant really accepts the beliefs, aims and objectives of the party, it is required that he should be denied membership. TANU is "a party of workers and peasants."¹ The Declaration also recommends that members should get a thorough teaching on Party ideology so that they may understand it, and they must be always reminded of the importance of living up to its principles.²

Again, the Arusha declaration requires that every TANU and government leader must be either a peasant or a worker and should in no way be associated with the practices of capitalism or feudalism; should not hold shares in a company; or hold directorship in any private owned enterprise; or receive two or more salaries; or own houses which he rents to others.³ "Leaders" in this sense, comprises members of the TANU national executive committee; ministers; members of parliament; senior officials of para-statal organisations; all these appointed or elected under any clause of the TANU constitution; councillors and civil servants - high and middle cadres.⁴

1. *ibid.*

2. *ibid.*, Part 5.C.

3. *ibid.*, part 5.A.

4. *ibid.*

Tanzania is a state of peasants and workers, with socialist aims but is not yet a socialist state. "It still has elements of capitalism and feudalism and their temptations. These elements could expand and entrench themselves." And a true member of TANU is a socialist.

"and his compatriots, that is fellow believers in this political and economic faith, are all those in Africa and elsewhere in the world who fight for the rights of the peasants and workers. The first duty of a TANU member, and especially of a TANU leader, is to live by these principles in his day-to-day life..."¹

The party in Tanzania is a key institution and the relationship of its organs to some of the organs of the state have an important constitutional significance.²

The supreme organ of TANU is the National Conference which meets every two years.³ The national conference consists of officers of the party, national, regional and district, delegates directly elected by the districts and affiliated organisations, members of parliament and certain nominated persons.⁴

1. *ibid*, Part 2 (a), (d).

2. cf. J.P.W.B. McAuslan and Y.P. Ghai, 'Constitutional Innovation and Political Stability in Tanzania: A Preliminary Assessment'. *Journal of Modern African Studies* 44(2) 1966 pp 479-515.

3. TANU Cons. E.2.

4. Its membership is estimated as between 400-450 persons cf. McAuslan et al *op.cit*.

It has general powers of formulating policy and supervising the actions of TANU. It can change any decision made by any other organ of the party or by any officer of the party. It has powers of expulsion from membership and of amending the constitution of TANU (by a two thirds majority).

However the length of the time between the meetings of the national conference affects its relative importance. In practice real power lies with the national executive committee of TANU, as it does with the political Bureau in Guinea and Mali. The National Executive Committee (N.E.C.) meeting once every three months, decides on matters of great national importance which would be too late or too impracticable for the national conference to reverse or repudiate even if it had a mind to do so. Some major decisions of the state have been taken at NEC meetings, such as for example the decision to establish a democratic one-party state. The NEC consists of some eighty members. The president of the party is elected by the national conference for six years. The other members consist of seventeen elected by the conference and an equal number of regional commissioners who are ex officio members plus others. The secretary general, the deputy secretary general and the national treasurer are

appointed by NEC. It is interesting to note that the presidential commission, while recognising the importance of the need to maintain the continuity of the day to day administration of the party, recommended that the president of the party should be empowered to remove the secretary general, deputy secretary general and national treasurer presumably at his discretion. Previously they could only be removed for misconduct. He is nevertheless required to report on the circumstances to the next meeting of the NEC.¹

The presidential commission was at pains to point out the importance of co-ordination of the decisions of the NEC with those of the government. The question of the NEC membership has a bearing on this matter. The NEC needs to be well informed of the details of action already taken or contemplated by government, and to have readily available expert advice on the administrative and legal problems which may be posed by any policy under consideration. The commission therefore recommended~~edg~~ that the principal secretary to the president (of the republic) and the principal legal adviser of the government (provided he is a member of TANU) should be ex-officio members of the NEC.²

1. cf. Report of Commission op.cit. p.29.

2. ibid.

The role of the NEC in relation to the national assembly is also of interest. Members of the national assembly are ex officio members of the party national conference, and their function as qua members of this conference as well as qua members of the national assembly may act as a mutual reinforcement of the control function of both institutions. The report of the commission on this is instructive. The commission has reported:

"The establishment of a one party state in which the position of the party is formally recognised in the constitution itself must necessarily destroy the distinction which exists at present between the institutions of the party and those of the government. We welcome this. The distinction between government and party has never been understood by the people. For the ordinary man uninterested in constitutional theory TANU is the government and the government is TANU. This does not mean, of course, that in a one party state the institutions of the party must necessarily be substituted for those of the government or vice versa. It does mean, however, that both sets of institutions can be looked at afresh as integral parts of a single constitutional system."¹

Nevertheless a distinction is drawn between the role of N.E.C. and the national assembly. The N.E.C. is concerned with the formulation of the broad lines of policy.

1. opcit. p.16.

"It is the soul and conscience of the party."

At its meetings the basic assumptions of government policy are frankly questioned and exhaustively debated. The national assembly, on the other hand, is primarily concerned with the more detailed task of giving effect to government policy through appropriate legislative measures and exercising vigilant control over all aspects of government expenditure (italics supplied).¹

The other central organs of the party, are the central committee, the 'cabinet', the electoral conference and the disciplinary committee have less important functions.² Of these only the central committee has any effective political role. It consists of the senior officers of the party, together with such persons as may be appointed by the president of the party; several of its members are cabinet ministers, and this fact is given, among others, as^a/reason for the relative unimportance of the central committee - "there are no members who are powerful purely by reason of their standing in the Party."³

1. *ibid.*

2. *cf.* TANU Cons. E, 5, 7, 36.

3. *cf.* McAuslan et al, *op.cit.* p.485.

At the local level the organs of the party and government meet in the same office. The regional commissioners are regional secretaries of TANU.¹ Also since 1965, the district councils include members of the district executive committee of TANU who are ex officio members of the council. The same is true of town councils and municipalities where there is^a separate TANU organisation.²

In spite of the intermingling of personnel, however, the organs of party and state have been kept distinct performing distinct functions. To that extent, the potential role of the party organs as means of control of the executive may be enhanced. Some observers consider that the thrust of the changes in Tanzania is clearly in the direction of the effectiveness of control of the party over government, both in its contact with the people and in its power over the government. It is also suggested that the emphasis laid on institutions of control over the government indicate that the problems of government in a one-party State were perceived by the leaders of Tanzania, and in particular by the president and the presidential commission. The establishment of

1. Regional secretaries are ex officio members of the NEC.

2. cf. The Report of Commission, op.cit. p.25.

a permanent commission of enquiry is another example which supports the view that the Tanzanian government and party leaders have made conscious efforts to prevent the emergence of a self-perpetuating oligarchy in a one-party system in which the government accepts certain controls over it without equating control with opposition and opposition with treason.¹ The nature and extent of the party's function as a motor force and brake on government will depend as much on the central party organs as on the party organ in the regions, which in Tanzania show strength and vitality. President Nyerere perceived the importance of strengthening the grass roots. He relinquished his government leadership in January 1962 "in order to re-organise and re-orient the party for the new struggle for economic development and he has constantly insisted on the need for the party to keep itself in touch with the grass-roots of the movement and the ordinary peasant."² This is further illustrated by the decision of the Tanzania government in 1966 to launch a university student service project designed to keep the new elite in touch with the general public and with the reality of the nation's life.

1. Cf. McAuslan et al, op.cit.

2. ibid.

The Arusha resolve on self-reliance is another aspect of the Tanzanian leaders' basic political (poulist) orientation. It is not doubted that there are some of the important conditions for the fruitful exercise of government party executive power in a developmental context.

We must now turn to the structure of the Arab Socialist Union. It must be borne in mind that the structure of the Egyptian state after 1952 reflects the peculiar way in which it was created, which has an important bearing on the structure of the party. First of all it~~s~~ is linked with president Gamal Abdel Nasser and his military colleagues who brought about the revolution. As already stated the membership of the Arab socialist union was envisaged to comprise the peasants, the armed forces, the workers, the intellectuals and the national capitalists. As President Nasser claimed, the organisation of the Arab socialist union would bring into light a new vanguard - "the nation has invested in the far greater authority than my functions as President of the republic warrant. I shall put this authority at the service of this vanguard". But what kind of vanguard was it?

As regards membership qualifications this corresponded roughly to universal suffrage; proof of citizenship; age limit (18); absence of criminal record; acceptance of the charter and written application. The union is founded on the basic unit which is the village or an equivalent grouping such as a factory. The next level is that of the city, district or public corporation composed of more than one basic unit. Then comes the level of markaz - a municipal and police unit. After that there is the country governorate level, and finally the national level. The basic units elect their councils. These basic units also send delegates to elect the members of the councils immediately above them. Similarly the markaz delegates elect the county councils. The supreme organ of the Union is the General national congress which consists of all members of the councils, right down to the basic unit. It has a six year term and it meets once a year. The general national congress elects a general committee to carry out its work between its meetings. The general committee in turn selects from among its members the higher executive committee of not more than twenty-six persons.

There is also a presidency council which deals with all matters pertaining to the powers of the president of the republic. Its members are chosen from the higher executive committee of the congress of the Arab Socialist Union. President Nasser's comment on its function is significant, - "I stated at the National Congress that we would apply the system of collective leadership. There will be a president of the republic but there will be meanwhile a Presidency Council for all the functions included in the constitution. There will also be a Prime Minister, a council of ministers. We shall all thus work in a collective system..... The presidency council will represent the supreme authority of the State. The executive council will represent the executive and administrative powers of the state."¹ zz He also explained that the creation of the presidency council, which was regarded as a voluntary limitation of his powers, was designed to relieve him of many administrative responsibilities of government and thus enable him to apply himself more fully to the establishment and proper functioning of the Arab Socialist Union.

1. cf. Mohamed Ali Rifaat, op.cit. p.9.

This emphasis laid on "party work" by President Nasser can be explained partly by the origin of the Nasserite revolution which needed popular legitimation; and partly by a desire to place the achievements of that revolution in a structured political, social and economic basis. The ideology of Arab Socialism was linked with this task. It will help to trace its development, in order to gain a proper perspective of its position and role.

The power of a military regime cannot bear much fruit in terms of obtaining popular response and participation in economic and social development, unless it is properly founded on such a base. The old adage:

"The same arts that did gain

A power must it maintain"

needs to be qualified in modern times, where the values of universal participation in government through a political party gives the party specific legitimacy. The military regime cannot act as custodians of such legitimacy unless they make genuine efforts to establish the party on a civilian base. Nor can they rule as a caste, apart from the society in which they are engaged in politics.¹

1. This is examined in more detail in Part IV of this study.

The term "politics" is here used in a wider sense embracing the direction and supervision of public life and the interaction involved therein; and not merely in the limited sense of the activities geared to gaining or maintaining power.

The leaders of the 1952 revolution led by Nasser were initially faced with the task of the conquest and consolidation of power and the liberation of Egypt (a) from a much abused feudal regime and (b) from foreign domination. The first stage of their advent was influenced by these objectives which were achieved by 1956. Later, having achieved their first set of objectives, they turned to the task of giving their political revolution an economic and social content. In a word they began a search for a specific ideology. They started a series of measures which culminated in the nationalisation decrees of the summer and autumn of 1961, as if testing the peculiar socialist ideology which they developed by stages. 1961 was also marked by a series of crises, including the break up of the union with Syria. The civilian intellectuals of Egypt at the time seem to have withdrawn their "participation", refusing to provide

the regime with its ideology.¹ The regime was therefore left to its own intellectual resources to rationalise the progress of the revolution giving it specific ideology and direction.

So, in the spring of 1962, a conference that called itself the National Congress of popular forces of Egypt met to deliberate on the national charter, which was proclaimed in June of that year. The national union which had been previously formed as a make-shift body to rally support for the regime was now dissolved and replaced by a new one - party system. Thus the Arab Socialist Union was born. Mohammed Hassanein Heikal, the editor of the semi-official daily, Al-Ahram, defined the role of the military within a framework of a "new socio-political theory": the popular revolutionary movement can only lean on the army to reach the goal of the revolution. And again, echoing Gamal Abdel Nasser he wrote "We do not want politicians within the army. But the entire army constitutes a force within the national politics."²

1. Cf. Anouar Abdel Malek, 'Le rôle de l'armée dans la vie politique en R. A.L.' Rév. française d'études politiques africaines" Fév. 1967 No. 14, p.58-73.

2. Al-Ahram, 23-27 July 1962, quoted by A.A. Malek op.cit. p.69.

This explains the comprehensive membership of the Arab Socialist Union including, as it does the entire armed forces. The experiment is all the more fascinating because it is so unlike the majority of other cases in which a political party, headed by men who are also heads of the government, attempts to politicise the army.¹

Here we have army leaders who have a monopoly of government power creating a political party which embraces the army. But the experiment had its peculiar precautionary devices; - the Arab Socialist Union divided its military cadres into two categories:-

- (a) The officers involved actively in political life,
and
- (b) The officers who continue their military careers.

The first category had to abandon their uniforms and all the prerogatives of military rank. On the other hand they were given key posts in the state apparatus: the greater number of the higher diplomatic service, many posts of president, director and members of administrative councils of state organs, many posts as ministers and under-secretaries of State; directors general and directors

1. As we shall see later, where this is attempt threatens the corporate interest of the army, it can be the cause of a coup, cf. Chapter 8.

of different ministries; ~~the~~ almost all the higher cadres and directors of security services; an important proportion of directive functions in cultural domains, in information, in the press, radio and television. The second category could remain in the army.

In this way the "free officers" had control over the apparatus of governing. The supreme organ of the state, the presidency, was in the hand of one of them - albeit a universally accepted national figure. The key posts in the government, such as the ministry of war, and interior ~~was~~ in their hand. The government of Sikki Soliman, who was a colonel and engineer, contained four vice-presidents in the council of ministers, of whom three were high ranking officers of the army (Abdel-Mohsen Aboul-Noun, Mahmoud Younes and Sarwat Okasha); the fourth, doctor Mohmoud Fawzi (foreign affairs), though a civilian, was harnessed with a military man as the minister of foreign affairs, i.e. Mahmoud Riad. Half the number of the council of ministers of the Soliman government were high-ranking military officers. And as already noted through the first category of (former) army officers, the centres of executive decision-making of importance were controlled by the military.¹

1. A.A. Malek, op.cit. pp.69-70.

Nevertheless, the president of the republic, though originally a 'free officer', became president by a popular mandate. Moreover he is the president of the Arab Socialist Union, of which the army forms a partial membership. Even though some key posts in this party are held by the military-political cadres, (above all in the executive committee) the execution of the decisions made by the party leadership depends on the good will and co-operation of civilian cadres of activists and on the membership which it controls. The mere (mechanical) control of the instruments of power by formerly military cadres is not sufficient, if the Arab Socialist union, as a party based on the people, is to have any meaning, and if the government is to secure popular response and participates in its programmes of development. Ultimately the success of the experiment will depend on how far the politico-military leaders will go to create a genuine popularly based party which has effective means of action and control action to mobilise the people round an accepted leadership and government, and to exercise control over that government. The Arab Socialist Union is still a movement - a coalition of forces - and not a party. As Anour Abdel-Malek has put it:

"the popular masses in whose name actions are taken are outside the power of political decision; " and he adds that the resistance by the new class of politico-military technocrats is the source of the political problems of Egypt.

Some General Conclusions

This account of some political parties and their relation to the executive has been made on the basis of a belief that the cases discussed are representative. But it is realised that there are always local peculiarities which complicate the picture.¹ With this caveat, we must now briefly generalise on some of the problems which may arise in the system if^a one-party state with a dominant executive. If it is true that the strong executive presidential system of government has been harnessed in a one-party state, it is equally true that it is beset with problems. We can only outline some of the most important.

To begin with, in many cases the system was created for and by the national leaders who embodied the aspirations of their people. One result of this was

1. The focus is on the presidential regimes. The role of parties in other regimes have been touched upon in the appropriate chapters. Cf. chapters three and four.

that the party in some cases became an instrument of personal power in the hands of the leaders. The formal written texts of the constitutions which allocated powers and responsibilities were modified by the fact of ^{the} existence and the power-dynamics of the one-party system. Ghana, Malawi and The Ivory Coast are examples, as we have seen. It is conceivable that some aspects of this problem exist in all one-party systems, from the nature of things - the absence of opposition, the hierarchic and authoritative structure of the party, the monopoly of government-cum-party power of the leaders, etc.

There are other problems which are connected with this and which have flown from it. They may be summed up in the words: popular response, participation and control in connection with government policy and action. The power of the state, great as it is, has its inherent limitations. The control of force, money and jobs is crucial as a factor in motivating peoples' conduct, but it is not sufficient to motivate them to required directions all the time or to the extent required. Even the best organised party machines are not in themselves enough. It is now apparent, for

example, that popular participation in party activities are not as great as they were in pre-independence or immediately post-independence days. The most effective mass mobilisations in post independence Africa have been in the states which were faced with the threat of a departing colonial power, as in Guinea and Mali. Admittedly in Guinea and Mali the revolutionary mystique of the role of the masses and the Jacobin-Marxist tradition of the legitimacy of the "convention" which the parties in those two countries inherited helped the emergence of strong mass parties.

But the revolutionary elan of a party normally weakens with the achievement of some of the initial objectives - be it the removal of the foreign threat or other more positive aims. This may be expected to happen in these countries unless drastic measures are taken that can engage the energies, interest and support of the masses, and the party is revitalised as a key centre of decision-making.

The initial enthusiasm for participation in mass movements cannot be maintained for long periods of time at the same level. For one thing peoples' private

private lives make prior demands on their time and energy. This is true at the level of the party leaders and activists. Indeed, in their case, it is not their private lives alone, but government work that may place prior claims. In the post-independence period most governments needed all the qualified men they could muster. The parties inevitably suffered as the governments took the cream of their leadership.¹ Government work precludes full-time party work, so that even though these former party cadres may be still remembers the party work has to be carried out by other less prestigious members.

The proper test of an organisation is its responsiveness to the needs of the members, and the degree to which these involved in its organisation actually and directly participate in decision making. The two are related; the behaviour of the leadership in relation to popular needs and desires determines the nature and degree of popular responsiveness to government policy and action. Without proper popular responsiveness performance in planned development must suffer.

1. This is true of the parties as of other auxiliary movements like the trades unions; for instance Mr. Tom Mboya of Kenya was the general secretary of the Kenya federation of labour.

Consequently the leadership has to pay continual attention to those needs and desires. Exemplary behaviour is necessary. There must be manifest personal integrity; the leaders must not only be devoted and honest, but must be seen to be so. One must be clearly laid down rules and institutional devices of control over their policy and action. In this connection the example of the Arusha declaration, and the rules restricting the ownership rights of TANU leaders is a salutary one, and worthy of imitation elsewhere in Africa. A respected leadership can obtain popular response very easily. And a responsive public, willingly participating, is an essential instrument in the implementation of requirement plans. Popular participation organised through the mechanism of a well-structured party is also an effective means of ensuring control. The exercise of governmental power, in a development context can thus be more effective when the chief executive is at the same time the chief of the party, and in a position to set the party machine in motion for such participation.

What of the control of governments? A system of one-party government is most likely to succeed in serving a useful purpose in the long run, only if it is subjected to proper controls. Traditionally, in Western

systems, control over the executive has come from two spheres: legislature and the judiciary. The doctrine of the separation of powers was the source of this. Legally control means the power to supervise the exercise of certain functions within a given situation as defined by law; its operation was restricted. Politically Parliament could bring pressure to bear on the government on the totality of its policy or on certain specific actions. In Africa, as we have seen, the scope of both these means of control is restricted, if not inexistent. Parliamentary control can indeed be exerted through budgetary means and through a debate on the best means of implementing certain proposed policies. The control of the executive in Africa, must be sought elsewhere.¹

In the one party state it must be sought within the party itself. But is this possible? In this connection two facts must be reiterated. (1) the best among the militants of the party are in the government, and (ii) the top leadership of the party and government are the same people. This tends to subordinate

1. On the various possible means of control in the Tanzanian one party state cf. McAuslan et al, op.cit. Cf. also Wjatz and Prezeworski - 'Control without opposition in Vol. I of 'Government and Opposition' (Jan. 1966) pp.227-239.

party to government; and, in terms of the controlling potentialities of the party this trend has not been encouraging. In the absence of properly developed institutions and practices to that effect, a great deal must depend on the integrity and foresight of the leaders. Mali is an exception in having more members of the party political Bureau who are not members of the government. Whether this will remain the policy is difficult to say; but the emphasis laid in the "primaute du parti" may be a clue to an answer in the positive. In the other cases, even where the notion of "self-criticism" is advocated, it cannot exercise an effective controlling function in the absence of a body of people who are placed institutionally to pass objective judgements on the government as frequently as possible. The party congress meets too infrequently to fulfil this purpose and it is too unwieldy. It is the political Bureau (or executive committee) of the party which can therefore do this.

The Tanzanian leaders show an awareness of the dangers of the one-party system. The relationship of the TANU national executive committee with the national assembly and their defined roles which have been noted, are signs that a controlling role is envisaged for the party.

One of the terms of reference which president Nyerere gave the presidential commission in the establishment of a democratic one party state was the following:-

"What should be the organs of the Party through which -

- (a) national policy is formulated;
- (b) the people's will constantly finds expression;
- (c) changes can be brought about through peaceful means;
- (d) corruption or abuse of power overcome?"¹

It is clear that in Tanzania, as in Mali, the answer has been to make the party an organ of control as well as of policy formulation. One of the practical applications of self-examination to which the Tanzanian leaders have subjected themselves is the novel electoral practice in which two members of TANU contest an election in the same constituency.² If one can rely on historical precedence it is possible that other African states will adopt similar attitudes to revitalise the one-party, particularly in view of the shadow of the coup d'etat.

1. Report of Commission op.cit. p.4.

2. The last election produced some startling results; one important cabinet minister, Mr. Bumani, the then minister of commerce, was defeated along with several junior ministers.

It must also be remembered that in the circumstances of the strong executive presidential systems of Africa, the president can share a "confessional" role with the party (as its head). He could not do this on the claim to a monopoly of ideological "truth", if the one-party is to be "democratic". He can do it as the nation's leader. He is head of state and party chief as well as chief executive. As head of state he embodies the national will, and as party chief he has a party machine at his disposal to activate that will. Constitutionally he has the power and initiative of policy and of proposals of law to concretise that policy. But his national and party leadership charge him with a responsibility to subject government policy and action to necessary questioning. The party national Bureau over which he is president, even consisting of a majority of ministers, can afford him a legitimate and effective forum to do this. It is a somewhat "Jekyll and Hyde" role but in the circumstances an essential one. At the same time a wise leadership would pay due attention to the establishment and development of an independence mechanism of control. Tanzania's permanent commission of enquiry is one such mechanism which may prove to be a

conscious attempt has been made which may spur other or complimentary experiments. It is on such conscious self-examination that the success of the one-party system may depend.

Chapter Seven

The Executive in relation to the Civil Service

1. The nature and rôle of the Civil Service

The Civil Service is an executive arm of government. A common definition of the civil service derived from metropolitan models is that it is a service comprising all servants of the state, other than holders of political or judicial offices, who are employed in a civil capacity and whose remuneration is paid out of moneys voted by parliament.¹

A.L. Adu, following the spirit of this definition, has written:

"as a servant of the State the civil servant's first loyalty is to the State, since the government is charged, by popular choice with

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1. Cf. e.g. the definition of the Ghana civil service - A.L. Adu, 'The Civil Service in New African States', (Allen and Unwin 1965) p.24. Cf. also, definition of a 'fonctionnaire' (civil servant) in the Ivory Coast public service law, Loi No. 64-488, Dec. 21, 1964 as 'a person who is appointed to a permanent employment, who is a rightful holder of a grade (titularisée) in the administrative hierarchy of the central administration of the state' (Art. 1). This law excludes judges (magistrats de l'ordre judiciaire) and military personnel from the definition of a fonctionnaire (art. 1, last paragraph).

the control and administration of the affairs of the state the civil servant's loyalty is to the government of the day and he should appropriately feel a positive and consistent responsibility to prosecute the interests of the government as his employer. Usually the focal point of the civil servant's loyalty is the head of the state".¹

Clearly, the role of the servant, here expressed, was conceived in the context of a two-party or multi-party system of the metropolitan kind. The use of the phrase "the government of the day" alone suggests this. Yet, at the time of the publication of A.L. Adu's book, the one-party state was already in almost universal practice in Africa. Indeed a reading of his book reveals that he was aware of this.

In Tanzania, the presidential commission on the establishment of a democratic one-party state had reported in the same year. Its recommendation on the civil service reflects the approach of most African states and is, therefore, once more, worth quoting. It has reported:

"The political neutrality of civil servants and members of the military and para-military forces is no doubt an essential feature of any system in which more than one political party is allowed. In a one-party state, however, the idea of political neutrality has no meaning and

1. *ibid.*

only serves to exclude a substantial group of sensible and patriotic citizens from participating in public affairs.¹

President Nyerere had written in a similar vein, earlier. In his view also, the logic of the one-party state makes it absurd to exclude "a whole group of most intelligent and able members of the community from participating in the discussion of policy simply because they happen to be civil servants."² This view is shared by most African leaders.

The Civil Service Under the Colonial System

In the colonial situation, the role of the civil servant as administrator was important in at least two respects: (i) he was instrumental in carrying out the centrally directed colonial policy and the executive decisions made under it; and (ii) he was also important in ~~the~~ helping the formulation or revision of that policy. The second role was crucial during the early period of colonial rule when there was comparatively¹ little information

1. Report of Commission....op.cit. p.24.

2. Julius K. Nyerere, op.cit. p.26.

on local conditions, and the district officer or the 'commandant de cercle' was a pioneer researcher, occasionally preceded only by missionaries. To the local inhabitants he was the obvious symbol of the colonial power.¹ He was part of the colonial civil service along with the higher officers of that service.²

The structure of the colonial civil service had two central features. Firstly, it was hierarchically organised with some room for ventilation of popular opinion or grievances, but not for popular control. Everyone was appointed by a higher authority over whom the African people had no control or influence. Therefore the power of the district officer was absolute (if often benevolent) in the eyes of the local population. He and the colonial civil service of which he was a part, was the government. Secondly, the structure was based on paternalism and a degree of decentralised

1. Cf. Richard Symonds 'The British and their successors' (London Faber, 1966) pp.149-151.

2. On the earlier years the governor was usually, if not always, a colonial civil servant. *ibid.*

authority which left much discretion and initiative to the district officer. At the top, in the colonial capital, there was the governor and his secretariat. The district officer was generally responsible for maintaining law and order and was the representative of the government, with co-ordinating functions in relation to the field representatives of technical departments in his province or district. He also had either judicial power or the duty of inspecting 'native courts'.

Again, at the apex, the role of the top civil servant (the principal secretary, sometimes called the colonial secretary) was not seen as purely administrative. The colonial secretary, the governor's principal assistant, in the early days transacted business by corresponding with the district officers or residents. With the increase of economic and social activities, a financial secretary was added, and the two together with other departmental heads, would sit in the governor's executive council and in the legislative council to discuss ~~the~~ ^{and} formulate policy. In some territories civil servants were even appointed as "ministers" responsible for the supervision of departments and for answering questions about their activities in the legislative assembly.

And in the last days before independence African (non-official) members were appointed as ministers, while civil servants responsible to them became permanent secretaries.¹

The history of the civil service during the colonial period is as important in explaining the attitude of Africans on its role, as are the exigencies which created the one-party State. It has been said, with reason, that the executive nature of the colonial civil service made its Africanisation (and in particular of the higher posts) an attractive symbol of status.² This is the 'status-symbol' argument, but it is by no means the important one. Africans had lived under the impact of decisions of district officers and colonial secretaries which had deeply affected their lives. Any demand for political rights therefore necessarily involved a demand for the Africanisation of the civil service. This coincided with the material and other allurements which the administrative services had to prospective candidates, thus

1. *ibid.* Cf. also Chapter Two *supra*.

2. Cf. R. Symonds, *op.cit.* p.150.

whetting personal as much as political appetites.¹

2. Africanisation of the civil service

The advocacy for a policy of Africanisation of the colonial civil service was started some years before the independence movements got under way. Initially colonial educational policy did not have room for a planned African take-over of the civil service, any more than it had a calendar for African political independence.² Eventually the policy changed and more attention was paid to the training of Africans for responsible posts in the administration. But the delayed start meant that for several years after independence many key posts were to remain in expatriate hands. Africanisation as a policy

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1. In India, interestingly enough, the policy of the Congress Party led by Mahatma Gandhi was for many years one of hostility to the Indian Civil Service, as a colonial instrument. Gandhi's philosophy of 'Purna Swaraj' which advocated village democracy did not look with favour upon a hierarchically organised authoritarian administrative machine. Cf. V. Subramaniam 'Evolution of minister-civil servant relations in India' in Vol. I Journal of Commonwealth political studies, (1961-1963) pp.223-232.
 2. Cf. Kenneth Younger, 'The Public Service in the new States' (London, Oxford U.P. 1960) parts II, III and IV, and R. Symonds, op.cit. pp.149-170 and pp. 211-226.

of replacement of expatriate officers involved heavy financial burden in training administrative and technical staff.

The shortage of qualified manpower was acute in some states. In Malawi, for example, the government service required some 430 officers with university degrees or professional qualifications, and only 33 Malawians had such qualification in 1960, with some more in training, most of whom have since assumed posts. It was estimated that only 120 would be available by 1971, at the rate of educational progress of the time.¹ Nor was Malawi an exception, though the magnitude of its qualified manpower shortage is not representative of the majority of African states. Ghana, in 1958, still had 39% expatriates in its civil service. This represented a rapid advance in the proportion in 1952.² Even then, it was a slow process when looked against the pressure for rapid Africanisation.

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1. Cf. Report of the Localisation Committee (Aden^U Report) Zomba, 1960, p.22.
 2. In 1952, the ratio was in the reverse with 41% Africans in the civil service. Then, there were only 544 Africans to 1322 expatriates, whereas in 1958 there were 1984 Africans to 880 expatriates. In other words 1440 more Africans were employed in six years. Cf R. Younger, op.cit. p.33.

The colonial educational policy had been geared for a different administration, an administration which was primarily concerned with the maintenance of law and order. The 'successors', however, would spend most of their time in administering development programmes which, in many respects, required a different type of educational background and training. As it has been maintained elsewhere, "the objective of the former colonial service was to provide good government rather than exciting government. It brought integrity and impartiality, efficiency and loyalty to the tasks of preserving law and order and obviating disorder. But to meeting the exciting - if somewhat impracticable (sic) - aspirations of the new African ministers a completely different and more dynamic outlook was called for."¹ Nevertheless the educational policy with standards and other requirements existing in the metropolitan universities were adopted by the new colleges which sprouted in various parts of Africa. Those Africans who were trained abroad may be presumed to have imbibed the spirit of the

1. John Fletcher Cooke,

'Parliament, Executive and civil service'; in Parliament as an export loc. cit. p.158.

universities education they received in the metropolitan universities. One of the results of adopting or following the requirements existing in the university of London or Paris, for example, was that far fewer graduates were forthcoming to meet demands. It ^{was} ~~will~~ with this in mind that the Adu Committee on the localisation of the Malawi civil service recommended that Malawians should not be expected to pass the same standard examination set up by the British.¹ The general feeling is that there was too much emphasis on literary subjects, too little on technical subjects.²

The criticism on the heritage of educational policy is not limited to Anglophonic Africa; the French heritage was subjected to similar criticism by African leaders and by some Frenchmen. President Sékou Touré, for example, complained that too much emphasis was placed on formal education and diplomas,³ The top officials in the French colonial civil service, who could be posted

1. Cf. Report.... op.cit.

2. Cf. K.O. Dike, Paper at Nigerian Seminar on Manpower problems, Lagos 1964. This is the feeling expressed at various conferences in education in Africa.

3. Cf. Sékou Touré, *La Guinée et l'émancipation Africaine*, (Paris, 1959) pp.125 and 168.

in any French territory were required to have a university degree. The middle group who could be posted in any one of the territories under one administrative group (e.g. AOF, AEF) were required to have secondary education. The last group, those in the local cadre, who could only be employed within one territory, had primary education. But French colonial educational policy had been such that by 1954 there were only 88 Africans out of 1327 civil servants of the middle categories in the AEF group of territories.¹

The école Willam-Ponty near Dakar produced teachers and some doctors, many of whom were to be the leaders of the political parties and to emerge as heads of the new States.² Many members of parliaments and local assemblies are also former teachers. In this respect they French policy of permitting civil servants to be eligible for election produced some interesting results.

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1. Cf. R. Symonds, op.cit. pp.212-3. The author quotes a former education director of French West Africa (AOF) as saying: "the danger is never to teach too little; it is to teach too much." *ibid.*
 2. Cf. S.M. Syl, op.cit. Annexe II pp.210-213. This "annexe" shows an interesting proportion of former Ponty "old boys" in the governments of the Ivory Coast, Guinea and Mali.

The exodus from the civil service of former African teachers and medical officers to take part in politics just before independence, had an impact on the civil service itself and its position in government. The newly elected African deputies made their influence felt both on the educational system and on the position of Africans in the government services. They demanded for equal status of Africans and Frenchmen in these services, and there, they spoke with the authority of experience.¹

As for the ex-Belgian territories the Congo tragedy would probably have been averted, were it not for the Belgian educational policy and the policy of decolonisation which came too late. Africanisation programmes started only 18 months before independence, and there were only three university graduates when independence was declared.²

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1. Thus intensive Africanisation started after the Loi Cadre (1956) which enabled the African voice to be heard more clearly and loudly than before. Cf. chapter two supra. Since independence The French government has provided substantial assistance in various forms including direct scholarship grants and technical and financial assistance to the governments.
 2. This is apart from the four hundred Congolese trained as priests. Cf. R. Symonds, op.cit. p.223.

Politicisation of the civil service

The Africanisation of the civil service was connected with its politicisation in one important respect. The accelerated replacement of expatriate civil servants by Africans was accompanied by an identification, on the part of these African civil servants, with the political ideas and sentiments of the new African leaders, who voiced the needs and aspirations of the masses. This in turn affected the structure and function of the civil service and the minister-civil service relation. The colonial pattern of the governor and his secretariat sitting at the apex of the administration was replaced by a ministerial system with a cabinet co-ordinating the various ministries headed by ministers.¹ In short, the civil service changed from being the main machinery of colonial government to being the executive arm of responsible government. The senior civil servants became the administrative staff of ministries charged with advising and assisting ministers in carrying out their

1. This is of course subject to the qualification brought about by the presidential systems which modify the role of the Cabinet.

responsibilities. This constituted a fundamental change in the nature of the civil service - its responsibilities and tenure, in particular. The civil servants serving the ministers became answerable to them and came under their general administrative control. Above all it meant a change of attitude on the part of the civil servant as to the nature of his function - a change from the bureaucrat's faith in his patriarchal vocation to direct the destinies of politically 'immature' or 'incompetent' people to an acceptance of the popular will as represented by an elected government and as interpreted by the minister concerned.

This did not mean that civil servants in the new system were not involved in the formulation of policy. Indeed one of the features of politicisation in the new systems under one party governments is the fact that civil servants can be members of the party and through their membership influence or help to formulate policy. As the recommendations on this subject of the Presidential Commission of Tanzania which was quoted above put it the idea of political neutrality in a one-party system is meaningless. In reality, of course, the colonial civil servants were not unfamiliar with the one-party government; was not the colonial regime, an ever-present one-party

government, after all? The difference lies in the basis of the government, in the direction and orientationⁿ of policy, and in the allocation of resources. Also, now there was the party man who, as Dr. Milton Obote² has put it, was ready to bring grievances of the people before the administrator who must show a greater awareness of this.¹

Under the French system there has been less emphasis, in the division between the civil service and 'political' office. No public service commissions existed in the French colonial civil service. In the former British territories, on the other hand, public service commissions had been established to undertake recruitment to the government services and to advise on promotion. With the grant of internal self-government the commissions suddenly acquired a more executive character. The object of this change, as it has been pointed by R. Symonds, was "to protect the position of British civil servants against the African ministers."² But this eleventh-hour attempt

1. In a speech to the public administration seminar at Makerere college, cf. R. Symonds, op.cit. p.263.

2. Op.cit. p.257

at complete insulation of the civil service was counter-productive. For one thing, it placed what was sometimes construed as "insulting limitation" on the authority of the new African prime minister thus causing much irritation. Then again, as stated earlier, when it is considered against its colonial background and the new tasks which the African governments set for themselves, it was bound to be regarded as an impediment. So, in most cases, the function of the commissions in respect of the appointment of the most senior civil servants was put on an advisory footing again, after independence. And even in cases where the commission was required to be consulted by the executive on the appointment of permanent secretaries such as was the case in Kenya, its members learnt only on the radio on independence day that the expatriates had been replaced in those posts. Again in Malawi, the first candidates selected for training as administrative officers were chosen not by the public service commission but by a committee of ministers.¹

This was quite understandable in view of the temper of African politics. Around independence days. But, as matters stood, there was the problem of replacement and the lurking fear that there might be disruption of government work in case of mass-withdrawal of

1. *ibid.*

expatriate civil servants in disagreement with some of the government policies. The experience of Guinea and Mali, was instructive. The complete withdrawal of French administrative and technical aid from these two countries affected the economic and social development plans of their governments. These and other political factors compelled a re-appraisal of the role of the civil service and its relation to the party and the government.

(3) The civil service within the machinery of government

The civil service, as part of the executive branch of government, operates to implement policies. The effectiveness of the government, therefore, largely depends on its proper functioning. This means a proper orientation, that is to say, being in tune with the policy of the government, and it means efficiency, and what A.L. Adu has called "ability to respond in practical terms to its (the government's) policy decisions".¹ What does all this mean in practice?

1. Cf. A.L. Adu, 'The Civil Service in New African States', loc. cit. pp.25-6.

First of all it must be remembered that the civil service consists of administrative and technical experts - of economists, statisticians, agronomists, engineers, public administrators, accountants, health officers, etc. The expertise of these people and the experience of many among them makes them indispensable instruments of policy. It also means that they participate in devising policy. The policy of a party (and party) as expressed by its congresses, and national executive committees (or Bureaux) can only be expressed in generalised forms, on certain fundamentals, some of which also need the help of "Experts" to formulate¹. When one is considering the detailed technicalities and the implications involved it is the "experts" who decide.² Policy decisions' made to the exclusion of such people are amateurish at best and shots in the dark at worst.

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1. There may be such "experts" present at party executive committees as members. But the fund of expertise found in the civil service is of a different order of magnitude, owing to the number of the people possessing it and the administrative apparatus at their disposal.
 2. Technocracy and meritocracy are words which are bandied about, sometimes in derision. But ~~it~~ in modern public administration technocrats count for much.

At all events, 'policy' should not be taken to mean only that which is formulated or which is in the party resolution, or in the statute book. Every administrative act worth its name involves policy decision. Ultimately therefore administrative decisions concern policy.

It is no wonder then that the reputation or fate of a government may depend on the performance of the civil service. This explains the sensitivity of African governments to the attitude of civil servants towards their regimes, and their concern to ensure "that attitudes and orientations in the services are in complete accord with the philosophy underlying the government's policies."¹ It also explains and justifies the need for executive control over the appointment of senior civil servants. As stated previously, the chief executive appoints senior civil servants, in most cases on his own initiative and without a requirement for mandatory consultation.² The public service commissions have reverted to their pre-independence advisory character, and with good reason. The senior civil servants are the ministers' principal

1. A.L. Adu, *ibid.*

2. cf Chapter Five.

assistants in directing and supervising the implementation of policy. This, as we have said, necessarily involves them^m/sharing "policy decisions". This is not peculiar to Africa. It is a matter for reflection, for instance, that the royal commission on the British civil service (1929/31) defined "administrative work" as "that which is concerned with policy, with the revision of existing practice or current regulations, and decisions and with the general administration and control of the departments of the public service."¹ This is not particularly remarkable for those who know the ins and outs of the "corridors of power" of Whitehall. But to the enthusiasts of the "apolitical" civil service it serves as a reminder that in practice minister and civil servant work hand in hand as part of an integral machine, even in a two party system. The Queen's government could not go on otherwise.

1. Quoted by A.L. Adu op.cit. p. 40.

The Senior posts

The highest post in the civil service in most Anglophonic states is that of the secretary to the cabinet who is head of the civil service. He is sometimes called the chief secretary to the president or prime minister, as the case may be.¹ The rough equivalent in Francophonic African states is the "secrétaire-général du gouvernement", who is directly responsible to the president. Such a special functional relationship with the president seems to be dictated by the nature of African presidentialism. Both the secretary to the cabinet and his Francophonic equivalent supervise the cabinet-secretariat and are in charge of the preparation and timely transmission of the agenda to ministers, as part of their function. In general the president of the republic is loath to go over the heads of his ministers to consult with civil servants. But the secretary to the cabinet (or the secretary general of the government) is there, partly to act as a point of contact with the civil service. It is also interesting that in some Francophonic states such as the Congo (B) he

1. Cf. Adu, op.cit. pp.41-2.

must be a member of the party.¹ In some states, such as Tanzania and Congo (B), the present secretary to the cabinet is a member of the national executive committee of the party (and also of parliament in the case of Tanzania).

The secretary of the cabinet occupies a central position in the minister-civil servant relation. His work as head of the cabinet secretariat and as head of the civil service which involves him among other things, in attendance at cabinet meetings provides the key to the machinery of co-ordination and consultation which is so essential in government. He is custodian of cabinet records. The records which contain important decisions serve ~~as~~ as personal reminder to the president who must follow up decisions and see their implementation. His function of drawing up the agenda gives the cabinet secretary initiative for picking priorities which he is in a position to impress upon the president on their importance, e.g. proposals of legislation to be discussed which his

1. Information gathered through interviews of embassy officials. In the Congo (B) the secretary-general of the government has the rank of the minister. Cf. Statut général de la fonction publique du Congo, loi No. 1562).

office helps to prepare ^{and} ~~the~~ circulate in advance. The legislative activities of the ministers are thus indirectly controlled by such initiative, and in the ministers' jockeying for a place on the agenda, the president's decision can ^{lean} ~~be~~ heavily on the impartial position of the secretary general of the government, thus making the ministers dependent on the latter.

The cabinet secretary can provide continuity in cabinet procedures and practice within the limits of whatever change of general policy might be introduced by new ministers. If he is a member of the party's executive committee he can also create patterns of relationship between party policy, government decision and consistent administrative action through the civil service, to carry out the policy and decision. In such capacity he would, of course, be acting under the general direction of the president of the republic whose constitutional position requires him to undertake such supervision. But the harmony which must exist between party policy, government decision and administrative action can be maintained to a large extent through the good ~~office~~ ~~policy~~ of the cabinet secretary. The development of such harmonious relation or of a set of consistent practices on such relation, is of course, not in itself evidence of efficiency. The functional

significance of such patterns of relationships, in a developmental context, depend on other factors as well. They depend, for instance, on the effective demands which are made on those involved in the relationship and in particular on the cabinet and the civil service. Such demands can be made by the president, as^a head of state, by the party and by parliament. The response to such demands may be reviewed or decided upon by the cabinet or the president as chief executive. If the question concerns some financial, economic or social project, normally the cabinet has inter-ministerial committees to deal with details of a decision made by the cabinet. Such committees which depend on informal personal relationships are proved to be effective in carrying out policy or in preparing one.¹ But the cabinet or cabinet-committee effectiveness will depend on sub-cabinet administrative efficiency. It also depends on a clearly defined departmental function and consistent practices built on these functions. This is the more necessary in states where frequent cabinet reshuffle is practised.

1. Information gathered through interview...)

Each minister heading such a department is assisted by the next most senior civil servant, namely the permanent secretary (sometimes called principal secretary). Each permanent secretary of a ministry is responsible for advising the minister on departmental policy, for ensuring the implementation of such policies and for personally administering the services of the ministry on behalf of the minister. He is generally responsible to the Public Accounts committee of parliament for ensuring that the expenditure under the Votes of the ministry is incurred in accordance with standing instructions and with the appropriations Act. The staff of the ministry under the permanent secretary are: one deputy permanent secretary (or more), other senior administrative officers usually with the rank of "under-secretary", principal assistant secretary and assistant secretary.¹ Then there are the usual supporting junior executives, clerical, secretarial and subordinate staff.

In Francophonic African states the civil servant at the level of the permanent secretary performs similar functions. The general practice is to have two such

1. Titles sometimes vary; the above are typical.
Cf. A.L. Adu, op.cit. pp.171-3.

persons: (i) the directeur du cabinet who is in charge of general policy matters concerning the ministry; and (ii) the chef du cabinet in charge of administrative matters, including questions on personnel and accounts.¹

They have under them similar supporting staff.

Normally each ministry is organised into functional divisions and sections to handle subjects covering the departments under the ministry with a view to administering the ministry with minimum economy and maximum efficiency. The volume of work determines the numbers of each rank of civil servants employed in each ministry, though this has not prevented a Parkinsonian proliferation of positions.²

1. Cf. e.g. The Ivory Coast, Loi No. 64-488 of 21 Dec. 1961; and Mauritania, Loi No. 64-67 of 24 April, 1961.

2. E.g. in the Ivory Coast there are five major categories in the civil service - A, B, C, D and E. There are 50 corps in category A; 41 in B; 39 in C; 22 in D; and 8 in E. (corps transitoire). Each category has its "corps des fonctionnaires" who are subject to the same status e.g. teachers. Within each corps there are grades and within each grades there are echelons. More government work means an expansion of sections to be staffed by people falling into any one of these position classifications.

The permanent secretary, as administrative head of the ministry, co/ordinates all the divisions within it. He is responsible for seeing that all the professional, technical and administrative skill is put to best use in a co-ordinated manner both at policy deliberation and implementation stages. He must devise mechanisms for consultation and processing opinions for the purpose of making an integrated proposals of policy ready for the decision or action by the minister. He must also direct and control, with skill and diplomacy, all direct access of other top civil servants to the minister for advice, when there is need. Such direct communication with the minister is always essential in order to ensure the best first hand professional and technical advice. But it can also be overdone causing a waste of time, and it requires the skill and judgement of the permanent secretary to ensure proper use of it. As a general rule, however, the minister's door must be kept open to top professional and technical advisors or heads of departments for, otherwise, resentment may be caused which could affect efficiency and good will.¹

1. A.L. Adu proposes this as a considered opinion, on the basis of his experience as one time permanent secretary in Ghana cf. op.cit. pp.175-6.

It must also be said that machinery for consultation is not limited to each ministry. There are in many instances inter-departmental ad hoc committees consisting of the permanent secretaries of various ministries. The relation is informal and often cordial and therefore likely to increase co-ordination of policy decision and implementation and thus avoid waste or duplication.¹ Such machinery of co-ordination at sub-cabinet level apart from its obvious advantages, can also strengthen the civil service as a unified apparatus of the government, with a permanent head.

Recruitment and terms of service

An efficient civil service depends on the quality of its members. This in turn depends on certain conditions, the most important of which is that there must be certain objective criteria, which determine the recruitment to and advancement in the service. There must be fixed and easily ascertainable rules for the selection, appointment, promotion, discipline and retirement of civil servants. This ensures the attraction of talents and the efficiency

1. Information gathered through interviews.

as well as the stability of the service. Individual merit and public interest should at all times prevail and external influence, patronage and nepotism eliminated.

The normal machinery which has been adopted to fulfil this task is the public service commission, called civil service commission in some states.¹ The commission is charged with the responsibility for advising (in most cases) the appointment of the higher ranks of the civil service, and for making appointments, transfer and discipline of civil servants below the rank of permanent secretary. The commission usually acts in consultation with the head of the ministry in respect of the higher posts. It is also normal practice for the commission to delegate power to the heads of the ministry in respect of the lower posts. In the early days when the commission was vested with executive powers some confusion and delay was caused in many cases. The delegation of power to the head of ministries was therefore considered to be a necessary step to obviate such difficulties. This resulted partly in a certain amount of disappointment with an

1. This is limited to Anglophonic states.

institution which many were trained to see as a guarantee against possible arbitrariness. But there can be no doubt that some delegation of power was necessary.¹ The possibility of arbitrary decision may be met by certain institutional safeguards with built-in mechanisms which operate more or less automatically and thus inhibit or minimise arbitrariness. For example article 23 of the Ivory Coast Civil Service law provides that each year all civil servants must obtain a numbered card followed by a general appraisal expressing professional evaluation. This makes external influence or manipulation difficult, and may perhaps be regarded as a sort of mechanical compensation for the absence of a public service commission. There are of course personnel committees in each ministry or department that must give their opinion on the annual list of proposals for promotion which is prepared by each division of the ministry.²

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1. Based on personal experience as head of a department and confirmed by exchange of views with other African department heads.
 2. They are called commission administrative paritaire in the Francophonic states, which also have a ministry for Public Service (fonction publique).

The status of the public service commissions sometimes varies. In Ghana (under the Nkrumahist Constitution) and in Tanzania, for example, ^{although} appointments and promotion of public servants ^{was} ~~though~~ vested in the president under the constitution and Acts of Parliament, the commission had power delegated to it to act executively over certain classes of posts, except the highest and the lowest posts. In other states the commission enjoys executive powers over the appointments, promotions and discipline in respect of all posts except those of the permanent secretary and comparable or higher posts.

Apart from recruitment, promotion and discipline, it is also part of the function of the commission to adjudicate in disputes arising from the civil service regulations in regard to recruitment promotion and discipline. The commission interprets the civil service regulations. Normally the chairman of the commission is appointed on a full time basis. The other members are full time, appointed for a fixed term of years, with security of tenure.¹

Objective methods of recruitment to and advancement in the civil service create the necessary

1. Cf. Adu, op.cit. p.138.

incentives which can properly motivate the individual civil servant to make maximum contribution. Exhortation for service, for more effort, for integrity and hard work are of course necessary. But they cannot be a substitute for objective criteria and fixed standards. The executive and the party can play a controlling role in modifying these criteria for reasons of declared public interest. But this must be done explicitly and according to law. The system based on merit has legal backing not only in the sense of sanctions but in sociological terms the publication of competitive examinations and results in official gazettes, and the glare of publicity helps to resolve problems of patronage.

Executive control in the appointment and tenure of the top civil servants should be sufficient to ensure the implementation of party and government policy. Below that, attempts at wanton interference can only harm the working ^{of} the civil service and reduce performance and hence ultimately ^{harm} the party and government policy. It will lead to a crisis of confidence which is dangerous in the long run. This does not of course exclude the role of the party as recorder of public sentiments and grievances which can be aired through proper channels.

The party-civil service relation is bound to be a delicate one for many years until institutional mechanisms are developed. But it is at least plausible to ^{say} ~~argue~~ that in a one-party system which makes membership to the party open to civil servants there is less reason for attempts at manipulation of the civil servants by party officials than under a multi-party system. If attempts at manipulation are made they must be presumed to be made on personal, family or factional basis which is conceivable under any other system. In fact/^{the} pre-occupation seems to be in the reverse; a fear that membership of the party might induce civil servants to enter into active politics by seeking election to the national assembly and thus cause a decline in efficiency. As a remedy to this it was recommended in Tanzania that civil servants should be only eligible for membership of the national assembly if nominated by the president, but not otherwise. It was also recommended that the president should have power to nominate a limited number of civil servants to membership of local assemblies, and that civil servants should not be otherwise eligible for membership of local assemblies.¹

1. Cf. Report of Commission op.cit, p.24.

As a result civil servants in Tanzania are encouraged to join TANU but their political activity in the sense of seeking election is heavily circumscribed. Some civil servants have resigned their posts to contest seats in the general election.¹

district

As for regional and administrators, many states took over the colonial system and retained the services of district officers as civil servants. In the case of the Francophonic states the more centralised and direct system of administration of French colonial administration made the continuation of the use of civil servants as district officers easier. In most of these states the civil servants remained as the central government's representatives in the district with a change of name.²

1. Cf. McAuslan et al, op.cit. Mr. C.Y. Mgonja, for example, resigned his civil service post to contest an election, won and was made minister of community development and national culture; and he was not a professional party man. *ibid.*
2. The name 'Préfet' replaced the colonial name 'commandant de cercle' cf. Robert Delavignette - 'Des commandants Français au préfets Africains; *Révue Française d'études politiques Africaines* No. 2 (Feb. 1966) pp.30-40.

In some Anglophonic states such as Tanzania the top civil servants were appointed as regional commissioners, a post regarded as political.

(4) Government policy and the civil service

The civil service as the executive arm of government is an integral part of the executive and as such assists in the formulation, direction, supervision and control of policy. In a multi-party system there is a rule which enjoins civil servants to serve all governments of whatever complexion with equal loyalty and efficiency. It is a matter for doubt whether a government with radical policies can get unquestioned loyalty and efficiency by a civil service opposed to those policies. But this is conceivable also in a one-party system. The civil service being daily concerned with administration according to certain established rules and practices tends to be "conservative", and "radical" policies tend to disturb some of its established beliefs and practices. Equally true, however, is the need of a machiner, for the formulation and implementation of policies. In a word the bureaucracy is a necessary evil.

It may be stated as a general rule that the new African governments have not met with opposition from the civil service as a distinct bureaucratic class. Nevertheless the quality of its composition and the crucial nature of its function makes the civil service a vital sector in government. It is necessary to devise institutional machinery for the effective supervision and control of the civil service in its working as executor of government policy.

(a) Formulation:-

As stated earlier, the qualification of civil servants and their involvement in the implementation of policy compels the participation of their higher ranks at the formulation stage. This could mean during the planning of the overall government policy. It may be reiterated here that in most African states the responsibility for the conception, direction and supervision of government policy belongs to the president. However, the president cannot properly discharge this responsibility by himself. The cabinet is there to assist him, and the civil service is one of the pillars on which both the president and the cabinet rest.¹ Any planning (and

1. The other pillar being the party.

especially economic planning) presupposes a searching and detailed study of the (economic and social) needs and resources of the country. Geo-physical, demographic and other data have to be known and specified, plus the available means - equipment, transports, etc. Only such basic studies will permit the production of a plan. This presupposes an administration adapted to development, which includes an adequate flow of information from the various ministries, and a central co-ordinating ministry or office of planning. All of these offices also need adequate and professionally competent staff.

In so far as planning means formulation the broad outlines of policy on the general direction the country should take; and in so far as it involves decisions on priorities in development, on the allocation of resources and adopting controls to ensure the best use of resources, the Executive has of course the major responsibility of decision. The party Congress and its National Executive Committee provides the executive with the platform to hammer out the general principles which will guide policy and action.

The Executive has nonetheless the initiative to work out programmes and propose Bills to parliament to carry out the general policy. For this purpose it relies on the fund of expertise and experience which is concentrated in the civil service. There needs to be therefore a close relationship between the Executive and the civil service and between goals and actions. As one economist has put it: "If a close relationship is to exist between national goals as expressed by politicians and economic programmes as expressed in the plans, close interaction is essential between political leaders and planners (whether expatriate or national). The relationship needs to be two way: planners to do their job must insist (1) that they should be supplied with a clearly stated set of socio-political goals, for example the desired levels of employment, consumption, the national ^sverus the foreign share of economic activity, the economic role of the public sector, and the minimum progress to be made in each front within the proposed period; and (2) that politicians should examine, first, the broad alternative strategies ^{as} for the economy, as a whole and its various sectors and, later, the more ^a detailed plan drafts, to ensure that these do, in fact, interpret their goals correctly. Planners, on their

side, need to accept the desired socio-political framework as given, and to shape economic policy towards its attainment; they should also make clear the costs, especially where the two goals - for example, a high rate of growth of output and a rapid buying out of foreign interests - are basically competitive, so that more of one means less of the other."¹

The political aspect of national planning efforts should not be divorced from the technical aspects. "It is not only useless but counter-productive to challenge the basic goals and aspirations - as opposed to specific projects - which cause a government to commission a development plan."² In fact a clear-cut political climate of opinion well organised and oriented towards the attainment of economic development is a prerequisite.

By and large, the new African states decided to organise their economic and social development on the basis of long term plans. Plans which must involve

1. Reginald H. Green, 'Four African Development Plans: Ghana, Kenya, Nigeria and Tanzania' in the Journal of Modern African Studies' 3, 2 (1965) pp.249-79, at p.252.

2. *ibid.*

decisions on priorities and general direction of development, cannot be worked out purely on technical criteria; or, in other words, they cannot be the work of technocrats only, independent of general policy. Technocrats can and must help to collect, collate, analyse and classify data, in order to facilitate choice about priorities, and to draft the plan accordingly. But, to paraphrase René Dumont, it is impossible to elaborate an apolitical plan.¹ Ivory tower plans must be discarded because they stand little chance of success.²

It is generally agreed that the only sort of plans which can effect a "take off" are those which involve the total engagement of a government and its people, in action based on deliberate choice and in

1. René Dumont, op.cit. p.96.

2. There is a story current among African "élite" circles which recounts the meeting between a peasant, shepherd watching a flock of sheep, and a city man who went on a picnic. The latter asked the shepherd why he let the wool on his sheep grow so long, why did he not cut it and take it to market? Whereupon the shepherd answered, horrified: "What! and spoil the five year plan!?" The trouble with you city people, is that you don't practise what you preach!"

readiness to make certain sacrifices. This will need a set of clearly defined socio-political goals and an unreserved commitment to their attainment. In the absence of such objectives and commitment, plans and the exercise of executive power based on them would entail waste of human and material resources. Many African governments have professed socialism as a unifying ideology to guide them in setting out their socio-political goals. But, as we have seen, different interpretations of socialism are given, and in some cases it is a mere catch-phrase. Socialism in so far as it is related to a national plan is generally understood (and proclaimed by many African governments) to imply that the government must give priority to the satisfaction of the most urgent needs of the great mass of the population. "As against the massive importation of motor cars, it would prefer buses and lorries; refusing sumptuous palaces, it would build a great number of schools and small dispensaries. It would not sacrifice the primary and professional education of the peasant masses to the very high (degree) of education of a small oligarchy, destined to increase the privileged caste. It would seek to remedy the shortage of protein for the poor, instead of importing luxury food stuff for the rich...

Each one of these propositions determines a series of orientations essential for development."¹ Very few governments can claim to have stuck/such^{to} propositions.

Studies of the early plans of some Africans have shown that they suffer from a lack of clearly defined objectives, related to a basic ideological commitment^s. Some of these plans have also suffered from over-optimism and too much dependence on foreign aid; while most of them suffered from a lack of co-ordination.² It has been found in Tanzania, for example, that the planning secretariat was left with a far broader and less specific set of goals to translate into economic policy, as a result of a lack of detailed proposals in the Five Year plan of economic and social development (1964-69). The secretariat therefore proceeded to offer basic alternative choices to the government both on a general and on a specific level.

1. R. Dumont, op.cit. p.98.

2. R.H. Green, op.cit. pp.250-262; and R.C. Pratt, 'The administration of economic planning in a newly independent state: the Tanzanian experience 1963-1966, in Journal of Commonwealth political studies, Vol. V, No. 1 (March 1967) pp.51-6.

This meant that they induced further thinking on a set of detailed socio-political aims and an economic plan for their attainment. In other words much of the socio-political programme worked out, post-dated the plan and did not stem from a party ideology. As a result there was a very low level of national consciousness of the plan and of its relevance to national aspirations, for example in the lower ranks of the civil service, the party and the party-related mass movements.¹

Co-ordination is a key to the success of a plan, and it gives more meaning and better efficacy to individual executive decision at every level. The importance of co-ordination impinges not only on the various stages of implementation, but also at the formulation stage. Indeed, the latter has a bearing on the former to a great extent. Thus in the Nigerian National Development Plan (1962-68) there were four (later five) plans, one for each regional government and one for the federation, which were not fully co-ordinated on paper, no less than on organisation and implementation. It appears that the plan was worked out by a limited number of expatriate economists, "working virtually in a vacuum

1. Cf. R.H. Green, op.cit. pp.253-4.

so far as detailed direction or consultation with political leaders went, and with only peripheral advisory contact with Nigerian civil sergants and planners."¹

In Kenya, the Development Plan (1964-70) was prepared in great haste without sufficient detail, owing to the urgency felt for the need of such a plan by 1964 and the political events which overtook it.² The balance between industry and agriculture is one of the subjects on which economists debate. A hastily conceived plan is bound to upset such balance, and its enforcement would be met with failure.³

No development plan, however, well conceived can replace the will to develop. Behind such a plan there must be a well-organised and mobilised population. The need of universal education is an obvious one. But over and above that there is a need for a politically educated and motivated population. In pre-independence years this was easily achieved in ^{the} face of the colonial ruler. Post-independence years required a mobilisation for development. If the civil service can be termed

1. *ibid.*

2. *ibid.*, pp. 259-60.

3. On the experience of other countries in the balance between industry and agriculture. Cf. R. Dumont, *op.cit.* pp.122-5.

"development administration", then "development politics" is an appropriate term to characterise the role of the masses in such a context and their relation to the government. The role of the party in this respect has been described in the previous chapter. The executive and the party officials have a great task in inspiring the public with a will to develop and to sustain this will. It is not an easy task, but it is imperative given the need and the logic of the political system adopted by these states.

The party congresses and= the meetings of the party executive committees can set the broad socio-political goals and the party apparatus can help the government administrative machinery in providing the means for policy appraisals, for searching examination of public attitudes and for indicating problems and suggesting solutions. Thus, party, executive and civil service can find a meeting point. One of the advantages of systems which permit civil servants to be party members is that it can enable civil servants to avoid making ivory tower proposals. It can give them an opportunity to feel the pulse, as it were, of public opinion, through direct participation at party meetings.

If this might involve duplication of efforts, it would compensate adequately through avoidance of isolation which could be fatal. Serious errors and waste can be avoided if proper use is made of the one-party system. Senior civil servants can participate in the formulation of policy not only at the ministry level but also within the party organs, and thus bring the benefit of their knowledge and experience to bear on the formulation of general policies. Such direct participation of civil servants can also help to avoid three-cornered tussles (party-executive-civil service) or tug-of-war (party-civil service), in that each would be involved in a common decision which creates unity in shared responsibility. Such unity is one of the conditions for the successful implementation of a plan. It would also guarantee against the development of a gap between a privileged oligarchy and the general population.¹ But this is easier said than done. It would need a dynamic and dedicated leadership, at party, government and civil service levels. Present trends are not encouraging.

1. One of the disturbing phenomena in these societies is the gap between the salary scale of high ranking civil servants (and ministers) and the lowest civil servants and workers.

More governments will have to promote projects with the general welfare of the public in mind, and to that end reduce administrative expenditure, especially higher salaries, before they can inspire the masses, maintain their confidence and will to develop.¹ The role of the party in this respect can be crucial as a standard bearer and controlling agency.

As for the relation between the ministers and the civil servants it has been maintained that there must develop a convention whereby the minister should seek the advice of his staff on all policy matters. The minister, as the political head of his ministry, expounds the policy and manifests of ^{the} political party. The permanent secretary and his team should know which policy or programme would work and which would not. They should be in a position to make policy proposals in line with the minister's broad politics, for considerations by him.²

1. Some governments have been overthrown by army coups when they proposed a reduction of salaries, e.g. in the Upper Volta, the government of Maurice Yameogo. The fortune of Yameogo and some of his colleagues was estimated to be very high which reduced the value of the proposals for reduction of salaries.

2. Cf. A.L. Adu, op.cit. p.180.

The argument proceeds from an assumption of a multi-party system. Its validity is nonetheless applicable to any system. Even though the final decisions in regard to the ministry rests with the minister, a proper understanding of the nature of his role and that of his principal assistant and his team would compel him to seek their advice constantly before making his decisions. Policy decisions undertaken in disregard of such eminently necessary steps are bound to be faulty or inadequate.

The experience of the past few years suggests, however, that the real problems in the executive-civil service relation lies in the implementation of policies, plans and programmes more than in their formulation.

(b) Implementation

Once broad principles and goals have been formulated in resolutions, national plans and laws, the executive has again to rely on the bureaucracy to translate them into action. This process includes, inter alia, interpreting plans, and laws and making decisions accordingly; constant evaluation of plans on the basis of results and problems encountered; drafting memoranda, proposing solutions and action by the minister, who in turn, would take the necessary decision or take the matter

to the Cabinet.

The shortage of trained manpower is keenly felt in this as in all aspects of the administration in most African states. The top positions in the planning offices of several governments are mainly staffed by expatriates, and there are several of these at planning units and other technical departments of many ministries. Obviously the employment of highly paid expatriates, needed as it is, must be concentrated only in a few places. After independence loan from metropolitan governments or continuation of expatriates to fill such posts was not favoured unless found to be absolutely necessary. Experience since then has shown that the young Africans can quickly build up the qualities necessary to take up such positions given the right training in theory and practice.¹

Shortage of trained manpower has a bearing on the present inquiry because (i) it can inhibit the action of the executive in carrying out certain policies, or even in formulating what they, or their parties believe to be the right policies, and (ii) it affects the quality

1. Cf. A.L. Adu, op.cit. p.180.

of performance in carrying out government plans and programmes. Again, professional qualification, even where it is available, is not sufficient. In addition to training, dedication and honesty is needed; and where a limited number of qualified people are available, the choice of the government in appointment to key posts becomes limited. This presents a danger of producing a smug or even corrupt bureau-technocratic elite. All this has some serious implications to government policy and action. For example one of the obstacles to the implementation of the 1964-69 five year plan of Tanzania was the shortage of skilled personnel which meant that some of the projects could not be started while others were delayed.¹ Similarly, development projects in Mali and Guinea have been hampered by similar shortages. Shortage of capital, equipment and organisational experience are of course, equally keenly felt. In the face of such shortage when audacious plans are made and ^{will} meet/failure, the result often is, a tendency, on the part of the bureaucracy, through the party, to harangue the

1. Cf. First Year Progress Report on the Implementation of the Five year Development Plan (Public Sector), 1 July 1964 to 30 June 1965. Dar-es-Salaam.

masses for efforts and to issue them with orders which they do not really understand. The shortage of trained young extension workers to go and live with the masses and explain to them the purpose of the plans, leads to resort being made to the party and civil service hierarchy to issue orders. But this cannot create a fruitful dialogue and contribute to development. The masses can be aroused to face fundamental changes (which development implies) by being faced with the fait accompli of experimental projects (directed by technicians and agriculturalists) which they can see. The party can then help in mobilising them to a sustained interest in the efforts for change along the new lines demonstrated to them. A bureaucracy issuing orders from the comfort of the city life, remote from the reality of the peasant life cannot be an agency for change. Yet, decentralisation of its power would presuppose (i) that these are competent people at the periphery to engage in the direction of development, and (ii) that the periphery is always loyal to the central government, which is not often the case, especially where certain traditional forces have been left intact.

Recognition of problems of shortage of trained man power and allied problems, and attending to them

with urgency is one of the essential conditions in the progress of a country. Shortage of trained people implies a limitation on government decision on all directions. It would limit the value of avowed socialist policies in, for example, the nationalisation of private-owned industries, as this presupposes the existence of a qualified, executive, administrative and financial staff capable of directing the nationalised ^{bodies} ~~trades~~ with efficiency. Dependence on expatriate staff would impose limitations on government action or option in carrying out certain policies with which ^{some} ~~the~~ expatriate staff may not be in agreement.

Direction and Co-ordination

Government involves policy-making as well as direction and co-ordination in the execution of such policy. One of the implications of a strong executive presidential system is that the president must assume more responsibility in the direction and co-ordination of policy as in its formulation. The question of devising suitable machinery for the proper discharge of that responsibility is therefore an important one.

The usual machinery of the cabinet, of cabinet committees, cabinet secretariat, and the civil service can be utilised, of course. But undue dependence on the normal cabinet system would be unsuitable for an executive presidency. It would defeat the basic philosophy behind the constitutional ^{structure} ~~standard~~ of an executive presidency which imposes responsibility on the president to carry out these tasks, as it would transfer that responsibility to the cabinet. A cabinet system has its own laws of dynamics which would diffuse power - power that has been concentrated in the case of an executive president for a definite purpose. In a cabinet system each minister has an equal status to the others and an autonomous control over the affairs of his ministry. And in the British-type of administrative and institutional structure, the Treasury has certain dominance with an emphasis on budgetary and short-term financial problems. But the administration and politics of development which underlies the executive presidential system compels a departure from the cabinet system.

Development administration presupposes development planning, the objective of which is a decision making process in which government decisions which

bear upon the development of the country are taken with reference to an integrated and comprehensive plan and according to agreed and internally consistent set of national priorities.¹ The most common machinery which has been adopted to help direct and co-ordinate developmental decision making is a ministry of Development planning (sometimes called National plan). This ministry is usually responsible for preparing a national plan in consultation with other ministries and other units. The whole process is then co-ordinated at a higher level, usually through a cabinet planning commission presided over by the president or by a minister delegated by him. The ministry of development planning would report to the planning commission a procedure which should normally obviate difficulties of co-ordination. But experience in the past few years has shown that this machinery of co-ordination and direction does not always work satisfactorily. Evidently, there must be, attached to the office of the president, a staff of experts to advise and help him prepare the necessary directives to be sent out to ministries and other units, in order to overcome difficulties caused by conflicts between departments, of which there have been a few examples. Dangers of

1. Cf. Pratt, op.cit. p.39.

scattered implementation have been seen in several African planning efforts, leaving the general policy contained in the plan, to remain as a set of isolated programmes which are amended ad hoc by the Treasury and by other ministries.¹

In such circumstances executive decisions would lose meaning, being subject to the hazards of uncontrolled events. As a close student of the subject has put it:

"important projects and inter-relationships are dropped without re-estimating the overall impact; policies crucial to development are modified or dropped for inadequate reasons."²

And, it may be added, a great deal of energy is sometimes wasted in clashes and recriminations. An example will serve to illustrate the sort of issues involved in such conflict.

Usually the conflict occurs between the ministry of planning on the one hand and the Treasury and the such other ministries as education and agriculture. For example in Tanzania the ministry of development planning (which had been created in 1963 and abolished in 1964) was involved in clashes with the Treasury over allocation of resources and in assumptions on the rate

1. Cf. R.H. Green, op.cit. p.270.

2. ibid.

of growth. The ministry was involved in clashes with the ministry of education over the question of expansion of primary schools, and with the ministry of agriculture (plus the Treasury) over policy of rural development. The conflict with the ministry of agriculture illustrates ^a weakness in the machinery of co-ordination as well as in direction of basic policy. The conflict involved a difference of approach to agricultural development. The ministry of planning preferred a dramatic change in rural life by major efforts to plan the co-ordination ~~of~~ cultivation of agricultural holdings and to gather farmers into villages where resources could be more easily provided for them. The ministry of agriculture, on the other hand, stressed agricultural extension with emphasis on agricultural productivity without involving major efforts, to transform the social and cultural life of the rural areas.¹

Disagreements like this prove the point that in the absence of a clearly defined policy and a machinery of direction and co-ordination directly issuing from the president's office, there is a tendency

1. Cf. Pratt, op.cit. pp.45-6.

for the planning ministry to press its own views strongly on a number of important matters which lie within the jurisdiction and professional competence of other ministries. The resistance from such other ministries is, in such circumstances, understandable. For, they have within them ~~x~~ (especially the Treasury) a greater concentration of professional, administrative and technical staff able to cope with matters falling within their competence. Clearly more definite planning procedures and effective reporting systems and co-ordination by the office of the President is necessary.

Earlier experiences have been used to revise the machinery of direction and co-ordination in the decision process, in some states. The Tanzanian experience is again instructive, because of the boldness and frequency with which structural changes have been made to correct defects. The ministry of the Development Planning was abolished in 1964 and replaced by a Directorate of Development Planning which would function within the president's office. But the president appointed three ministers of state in charge of planning, and delegated extensive powers to them and to the Directorate, authorising them to give directives to individual

ministries. This act constituted a definite break from the cabinet system; each minister could now be given directives about his ministry in accordance with the plan.

The arrangement did not prove a success, however, for reasons, the details of which need not detain us here.¹ But it is interesting to note that, apart from the inadequacy of staff and the lack of flow of information and progress reports, among the contributory causes were the fact that the three ministers did not use their delegated powers. They did not issue any directive; they never consulted regularly together. In short, there was no unity, vigour and single-minded drive which ought to characterise such an office. It was inevitable that the Treasury in particular would reassert its authority in such situations with the result that development administration would be replaced by ad hoc and unintegrated decision-making.²

The position of the civil service in such situations is significant. The directorate of planning which is the link with the civil service made an effort

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1. For further account of the reasons, cf. Pratt, op.cit. pp.52-6.
 2. The triumvirate of planning ministers was replaced by a new ministry of economic affairs and development planning.

to assert itself at the civil service level, but met with equal failure.¹ For in a situation of clashes and disunity at the ministerial level the civil servants in each ministry normally back their ministers. Indeed in many instances the civil servants recapture lost initiative and formulate, post haste, new ad hoc policies and supply their ministers with such policies as ammunition in the "battle" with the development ministry or directorate. The shortage of trained people to check on the appropriateness of ad hoc policies and to arbitrate between conflicting proposals can leave the president's office captive to such happenings. A co-ordinated decision making process implies a continuous follow up through an effective reporting system and a panel of experts to appraise the progress reports and to prepare further orders or directives. Shortage of qualified and experienced staff to assist the president in this task will inevitably make him dependent on the civil service in the individual ministries, as was the case in Tanzania, for example.

Now, in the ordinary administrative process this need not entail any problem. Each permanent secretary is expected to prepare a policy proposal for his minister concerning his ministry. Furthermore, such a

1. *ibid.*

preparation normally involves a consideration of the implications of the policy. Whether this originates at the initiative of the minister or the permanent secretary, the relevant department or division chiefs who live with the problems will have helped in the preparation. Presidential dependence on the civil service in the ordinary administrative process is therefore perfectly reasonable. The machinery of the cabinet, its committees and the cabinet secretariat can also be used, and is used. For this purpose, A.L. Adu recommends that

"there should be periodical and regular conferences between ministers and their staffs for the discussion and consideration of major problems, or even for the purpose of talking generally about the general programmes of the particular ministries. There should also be occasional meetings between the president or prime minister and permanent secretaries and heads of departments. So that the overall government policy can be understood against the background of discussion with the highest authority in the land and also that the president or prime minister may come to hear the views of the top level officials concerned with the operational policies and get to know them and their worth."¹

This is no doubt ^{useful} ~~usual~~. Nonetheless there must be a central planning with machinery which ensures that all policy proposals are assessed in relation to the

1. A.L. Adu, op.cit. pp.233-4.

plan and in terms of its basic economic priorities. This machinery, whatever its form and name, must be under the firm control of the president, and must be staffed adequately with people highly qualified and experienced in all the necessary subjects. The machinery of the civil service and of the cabinet secretariat can be used additionally for co-ordination. But it must be subordinated to a central directing and co-ordinating office attached to that of the president. The experience of the past few years and the logic of the whole system demands this.

This is not merely a matter of theory; it concerns practical matters of attainment of national goals. Failure in direction and co-ordination results in lack of unified effort and dynamism. This is reflected at the top-ministerial and civil service-level as much as at the local level. Experience has demonstrated that such failure makes it difficult even for enthusiastic local officials to know how best to organise local effort for the attainment of national goals. The absence of clearly set out directives with immediate and specific targets at the local level results in the dissipation of momentum; and public opinion, which is initially mobilised through the publication of the plan and publicity

given to it, can easily grow sceptical about government. The office of the president is eminently suited to give the necessary corrective to such defects. Through his presidency of the national executive committee of the party, the president can issue the necessary directives to the party for the necessary mobilisation of public opinion and effort. But before public opinion and effort can be mobilised he must have at his disposal policy proposals worked out on the basis of periodic research and accurate information supplied to his office from various ministries and other units through an effective reporting machinery, and assessed by a panel of experts. This can avoid waste and facilitate the efficient implementation of policy.

The need for such an integrated decision making process although more urgent in developing countries, is not peculiar to them. In some developed states where the civil service operates according to well-established procedures, it has been pointed out recently that "wrong advice" has been given by officials to ministers, from time to time, notably on economics and finance.¹ The relationship between ministers and civil servants in Britain has

1. Peter Shore 'Entitled to Know' (London, 1960).

been said to favour a civil service dominance; and this, through no weakness of the ministers, but rather as a result of the power structure of the civil service which comes from a hierarchical organisation, their permanent position, the veil of secrecy which separates the present from the past and their control of the processing and selection of information. The magnitude of such power, it is maintained, makes it essentially political power.¹

The minister-civil servant relation in African is somewhat different at the moment, with the balance in favour of the minister. The factor of the one-party state which permits longer presence of the minister in a ministry is one cause. Another cause is the fact that many African ministers possess individual qualities and experience which compels them to intervene more and dominate their civil service which is not yet a hierarchically organised and disciplined "union", unlike in Britain, for example. There is as yet, no established 'corridors of power' - no fine gradation of variegated officialdom. Not yet. The one party system is not conducive for the growth of such power. But as recent studies in the bureaucracy in developing countries have suggested, in a world where bureaucratic centralisation

and power acquisition is the general tendency, the bureaucracy can very easily become strong enough to challenge or resist the challenge of other institutions of the state such as the party. Its monopoly (or near-monopoly) of administrative and technical skill facilitates this development, and may, in time make its control by other institutions the more difficult.¹

The problem of control will be in this connection will be felt more, as government plans, and programmes become more and more complex and the bureaucracy assumes more control over their implementation. The controlling role of the party of parliament of the president and of other institutions such as commissions of enquiry will then demand closer attention.

PART FOUR

THE ADVENT OF MILITARY RULE
IN AFRICA

CHAPTER 8

The Military Intervention in Politics

1. Causes of Intervention in general

Between June 1965 and January 1967 governments have been changed by violent means in eleven out of the thirty-eight independent African states. As a result, Algeria, Burundi, Central African Republic, Congo (Kinshasa), Dahomey, Ghana, Nigeria, Togo and Upper Volta are now ruled by military men who assumed office after forceful overthrows of the previous regimes. The Sudan, after a military rule lasting six years, has returned to an uneasy civilian rule which still rules under a transitional constitution ^{which} ~~with~~ provides for a peculiar kind of collegial executive.

Why have the military made such a thrust in politics? Before we try to answer this question it will be helpful to make ^{some} reference to the phenomenon of armed intervention in civil government, in general. Civil government rests on authority legitimated by various mechanisms, which secure the ~~habitual~~ ^{habitual} obedience of the people. Whether the government is a monarchy which governs through prescriptive right or a presidential régime based on popular mandate it commands authority because there is a general acceptance of its legitimacy.

Legitimacy is a difficult concept. But, to the extent that one can generalise about any concept, it may be stated that the power of the government acquires legitimacy because of a general recognition either (i) that it is there to protect and serve; or (ii) that it is capable of manipulating organised coercion to maintain itself; or because of a combination of both factors. Indeed there is a link between physical power as monopolised by the government and the popular view as to its legitimacy, because its use (or abuse) has a social context. Either as a historical fact or a postulate of reason it is believed by political ~~theorists~~ that at some time men, delegated their own responsibility (in regard to themselves and their families) to some amongst them to exercise it for a certain end. This delegated responsibility became power in the hands of its holders, and the (postulated or actual) delegation laid the foundation of legitimacy. A psychological basis was needed for this legitimacy, and it came in the form of the requirement that the power holder must be fit to exercise it. A sort of "comprehensive insurance" invariably followed purporting to ascertain that power is in good hands, and this took religious form, sometimes by investing sanctity to the person who held it. This explains the origin of divinity associated with absolute

rulers.¹

Legitimacy may be said to exist when a general habit of obedience has been established for a sufficiently long time. This is how the concept is linked in the minds and conduct of people which is conditioned historically, psychologically, economically and socially. And, as already explained in a previous chapter,² in modern societies the mass media counts for much; and coercion must be conceived less in terms of physical force, and more in terms of manipulation of values and sentiments accepted by the society. A large part of the use of state institutions is to achieve control without resort to brute force. Even the administration of justice, in the final analysis, is the subtle dispensation of coercive power, as the Swedish school of jurisprudence have demonstrated.³

1. The origin of religion has been explained in similar terms; cf. e.g. Bertrand Russell 'Human Knowledge, Its Scope and Limit - (London 1948), Chapter one.

2. c.f. Chapter 1.

3. Olivecrona, 'Law as Fact' (1939); cf. also a discussion on this subject in Denis Lloyd's 'Introduction to Jurisprudence' (London 1959) pp.248-57.

But all this assumes a state of things in which the government has the backing of a significant portion of the population or of critical sections of it enabling it to exercise its authority. Where a serious break occurs in the habit of obedience, for some reason, resulting in a revolt the mechanisms of peaceful persuasion give way to physical coercion to suppress the revolt. A government which loses general popular support cannot indefinitely use armed forces to maintain itself in office. This in fact is one way of inviting armed intervention in politics. For, when a government becomes too dependent on the armed forces and makes use of them too much or too frequently the armed forces tend to end up seizing control of the government in their own behalf.

The paths of military men to the high magistracy of the state is strewn with the human debris caused by the order of corrupt, ambitious or desperate political masters. This, as much as individual ambition explains the advent of the Caesars of which history is full. Caesar's victory ^ulabe^uls are a prelude to his crown. But the undue dependence on the military caused by their frequent use as repressive agents is not the only situation which leads to direct

military involvement in politics. Nor are all military coups led by reluctant heroes.

In the Middle East the military have taken upon themselves the task of leading or providing impetus to radical change. Latin America has given the world an image of a continent in which power-hungry colonels deposed governments and each other with astounding rapidity, frequently leaving their nations to be easy preys to the caprice of whoever happened to have control of any section of the armed forces.

Military involvement in politics has been associated by some with under development; it has been explained as "a response to the difficulties which the new states have encountered in their efforts to establish themselves as modern sovereignties."¹ ^{its} The discipline and organisation and its effective chain of command makes the military machine better suited to cope with situations of crises where a general breakdown of law and order is involved. But this is not enough to explain the political behaviour of military men and in

① E. Shils 'The military in the political development of the new states' in "The role of the military in underdeveloped countries", J.J. Johnson (ed.) 1962 p.8.

particular their intervention in civil government, totally or substantially replacing constituted authority.

Among the factors which are crucial in determining the political behaviour of the military are the educational background and professional ethos of the officers, the historical background of the army (in some cases including its reputation and role during the colonial period) and (in many countries) the ethnic balance of officers and soldiers.¹ Some of these factors influence the political attitude of officers in the long run, while considerations of salary increase, career advancement and conditions of service are the most likely causes of mutinies. There can be no one single factor or one type of condition applicable to every case - which makes military coups likely. A combination of two or more factors may be present, though one factor may trigger off the actual event. A major decision or blunder by the government may do this. Or, the coup may be the result of cumulative acts or omissions of the government. Whatever the final reason given, the motivation for the coup may be found in the corporate interest of the army as an interest group; or it may be

1. Cf. W. Gutteridge and N. Brown The African Military Balance.

that some regional, ethnic or personal self interest of significant leaders is involved; or it may be actuated by genuine concern for the national interest. Any one of these interests except the national interest may also be dove-tailed either with a class interest or with foreign interests or both.¹

Whatever its motive, the capacity of the army to overthrow a government seems to depend more on its cohesiveness and on surprise rather than on its size or fire-power, as events in several african states have shown. We shall see that this factor of cohesiveness is adversely affected in some cases where inter-ethnic or - regional differences reach the rank of the army itself, as in Nigeria. There, the danger is not limited to disputes between army officers alone, but may affect the unity of the state. The capacity to overthrow governments is one thing. It is quite another matter to govern better or to prepare a better government. The

1. Whether or not there is validity in the allegation that some of the coups in Africa, e.g. the Ghana coup, has been CIA instigated, it is clear that the CIA has topped or otherwise interfered with governments in the past decade. Cf. e.g. The Invisible Government Wise and Rose (1965).

bayonet is no~~x~~ substitute for the ballot box in this matter, though the ballot box is itself no substitute for the fulfilment of popular expectations and for bread and butter. But it is clear from the history of the army's intervention in politics that its readiness to intervene is not always matched by its modesty as to its ability to cope with complex situations. What it will do in the face of such problems will depend on various factors, including the original cause of intervention, the post-intervention situation and the quality of the military leaders in question.

In Africa the infancy of political institutions inherited or established at the moment of independence and the manifold problems which the new states face have made them vulnerable and tempting to military intervention. The ecstasy of the national birth was followed by growing pains. The search for a form of government consonant with the needs and aspirations of a continent in^a process of change, meets danger signs at every twist and turn. The movement for independence and (in many cases) the sudden and dramatic gain of sovereignty had raised high hopes in the peoples of the liberated territories. Party programmes, election manifestos,

mobilisation campaigns and songs of freedom¹ all worked to heighten this sense of expectation. Promises had been made whose fulfilment eludes most leaders. The 'revolution of rising expectations' came face to face with disappointment and frustration aggravated, in a number of instances, by disenchantment with politicians and the spectacle of corruption, waste and an ever widening gap between the few rich and the countless poor. As Edward Shils has written

"In almost every aspect of their social structures the societies in which the new states must be based are characterised by a gap. It is a gap between the few very rich and the mass of the poor, between the educated and the uneducated, between the townsman and the villager, between the modern and the traditional, between the rulers and the ruled. Almost every feature of the social structure of the new states conspires to separate the ordinary people from their government. This is a fundamental fact of life of the new states."²

1. Cf. e.g. The Ghana freedom song; "Ghana, Land of Freedom", "Voice of the Free, You have joy for ever...." etc.

2. E. Shils, op.cit. p.29.

Developing nations have to develop fast enough to catch up with increasing demands. Education is universally recognised as the key to development, and a large proportion of direly needed financial resources have to be allocated to education. Yet the supply of educated man-power needed cannot catch up with the demand for decades to come.¹ In the meantime there is a rising population of unemployed or underemployed school leavers. These and the many school failures add more yeast to ferment unrest. The growth of trades unions and co-operatives has also been raised problems which have to be solved by governments. The trades unions together with youth and womens' organisations were linked with the movements for independence.² After independence the object of complaint is no longer a foreign ruler. Anti-government strikes or demonstrations are now seen in quite a different light. The intolerant attitude of governments to such problems is sometimes understandable. But whether their explanations can convince unemployed or disaffected men and women is a different matter.

1. Cf. Report on African Education - OAU Conference March 17-24, 1964 OAU Review Vol. 1, No. 1, pp.27-38.

2. Cf. T.L. Hodgkin, African Political Parties (1962)

In the maelstrom of cultural, economic, social and political cross-currents in the life of these nations, one fact is primary. The increase of food production gets less every year in proportion to the increase in population.¹ Meanwhile, the harder the African works the less the reward, in some cases.² The rich nations get richer and the poor nations poorer. This is the most crucial problem to be faced by the generation of the post-independence period. The implications of the gap which Edward Shils has so very well expressed in the creation of class differences in African countries where there may not have existed - or not to a significant extent. Taken in a global context, this would create a small investing ^{middle class} ~~bourgeoisie~~ financially linked with the commercial section of the developed world. On the other hand there is the vast mass of peasantry which has been described as the true proletariat of this century.³

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1. Cf. René Dumont, 'L'Afrique noire est mal partie', (Paris Seul, 1965) p.7. Dumont gives the average rate of growth since 1959 as 1.7% p.a. for food and 2.5% p.a. for population.
 2. The world price of cocoa steadily went down, until 1966 when there was a sudden rise with the fall of Nkrumah.
 3. Cf. R. Dumont, op.cit. p.

In the background there is the whole process of modernisation (to which reference was made in Chapter One), with its inexorable logic of economic and social change, and the transformation of the value system which this change implies. The modern (educated) elite is at once a result and an agent of this modernisation process. This elite generally ranges itself against traditional ideas and forces. Even when some members of the elite affirm the past of their country they must stress its adaptability to present needs. There is an ambivalence in their attitude to some of their past heritage. The most crucial aspect of this ambivalence is seen in ethnic ties and in particular in the dependence on such ties for support on the part of some political leaders. This creates mistrust and cleavage.

At the governmental level this also gives rise to instability. The chief executive's role, originally cast as captain or steward, becomes one of referee or conciliator. And any signs of partiality are signals of danger, as it enhances the feeling of mistrust and undermines confidence in the national leadership. The outer (national) symbols of unity can easily be discredited in societies where the rural kinship system

is dominant, as it is in all African~~x~~, and in particular sub-sahara Africa. In such societies the loyalties of the ordinary man are confined to a narrow local range. This situation favours the emergence of leaders who serve these parochial interests, where parochial interests are fostered or advocated and the national interest dictates they cannot be satisfied, a further strife is created. Again this hinders the development of stable and coherent nation-wide parties, and, by creating mistrust, it creates a crisis of confidence in which one section of the population feels dominated or exploited by another section. This in turn weakens the effectiveness of government.¹

Now the army - even in its barracks - is not separate from society. The general ills of the society affect it as they affect other units. It has been said that the standards given them by their training are crucial in determining the behaviour of military officers. In particular it has been pointed out that commissioned officers feel that these standards are affronted when the state which they serve flounders and the civilian politicians "make a mess of things."²

1. Cf. E. Shils, op.cit. pp.14-15.

2. ibid, pp.18-23.

All the pronouncements uttered by army coups' leaders lend support to such view. One is impressed by the puritanical tenor which seeks to revive "moral standards or to abolish corruption."¹ Some of these pronouncements may, of course, be rationalisations. But it is generally true to say that an important aspect of the training in the military is a spirit of discipline which influences its political outlook. The life of the army which emphasises austerity also contributes to a general puritanical outlook in politics. Again in the under-developed world studies have shown that the army "tends to recruit into its officer ranks the brightest and most ambitious young men of the small towns and countryside...who are aware of distance separating them from the rich and the political elite."² As most of these come from poor families, it is suggested that class structure affects the conduct of the military vis-a-vis the political order.³ No

1. For a sample of such pronouncements in the case of the recent coups in Africa cf. Dennis Austin 'The Underlying Problems of the Army Coups d'Etat in Africa', 'Optima' (June 1966).

2. E. Shils, op.cit. p.17.

3. ibid.

detailed study has been made in African in this regard. The policies of recruitment may vary from place to place. For instance, in the Sudan there was a period when young people who failed to attain required standards of entry into the institutions of higher learning of the Sudan, were recruited in the army. The same must be true of many states which needed to form their officers corps with some haste in the post-independence periods. This is no doubt true where the pace of Africanisation in the army had to be forced in accordance with general policies of Africanisation. Or again, take the case of Ethiopia, where some among the brightest students were chosen for the military academy for the first few years. But it is not possible to draw any conclusions on the import of this particular kind of policy on the political formation of these young officers.¹

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1. During the colonial period, the colonial powers adopted a policy of recruitment designed to preserve an ethnic balance to forestall a unified revolt of the African armed ^{service} forces. Thus the usual policy of British colonial ~~policy~~ was to recruit from among the minority ethnic groups such as the Tiv in Nigeria, and the Wakamba in Kenya for officer posts, while the soldiery was drawn from other ethnic groups. Cf. Generally Guttridge and Brown 'The African Military Balance' Institute of Strategic Studies, 1964.

Much has been made of the fact that in most African states the army is ^acolonial creation and therefore its behaviour must follow criteria the underlying the professional ethics laid down by the colonial army. Among these is mentioned the fact that the army must be apolitical. The symbols which separate the soldiery from the civilian is more enhanced, it is argued, in the case of the African, who stands out against an African background.¹ But the fact remains that those uniformed members of an organised body called "the army" are also members (a) of a modernising elite and (b) of kinship group; and that the influences of these two factors impinge on them, as they are subject to a constant impact of both factors. To give a simple illustration. A is a lieutenant in the army of State X. He comes from ethnic group P and is educated. At one level of relationship he is subject to the impact of modernist ideas and values by virtue of his education and membership of an officer corps which shares similar ideas and values. He meets them in his work and at the officers Mess. He

1. Cf. W.J. Foltz, 'Psychanalyse des armées sud-sahariennes' *Revue française d'études politiques Africaines* (Fev. 1967 No. 14) pp.22-30, at pp.23-4.

also meets, at such Mess or elsewhere, civilian members of the educated modernising elite.¹ Among the issues discussed are political social and economic issues of topical nature. Some go deeper and analyse ~~questions~~^{issues,} putting them on a larger and deeper perspective. Inevitably the latest political scandals or crises and gossips, tit bits come up. Inevitably also there are always people in such a group (as in any other group) whose particular background and intellect^{ual} and make up will force them to put such questions on an ideological perspective.² The conduct of politicians will stand condemned by such people not because (or not only because) this constitutes an affront to narrowly conceived standards imbibed during professional training. But (also) because they deviate from new value-systems which require a basic policy orientation and an honest and unflinching pursuit of such policy. Roughly it may be called social justice, as this concept represents the

1. For example, in a number of states, many officers attend evening classes in extension courses offered by colleges, and, there, meet and discuss with civilian groups on many issues. This is based on private observation and information.

2. Again this is based on personal observation.

modernist aspirations in its socio-political aspect.

It will be seen that our army officer is not restricted by the narrow confines of (~~European~~) professional ethics.

At another level our lieutenant meets his relatives - parents, brothers, sisters, cousins, aunts, uncles, nephews, neices - and it must be remembered that the ties of the extended family in Africa are strong and demanding. It is a fallacy to think that an African officer will remain separate because of his training, uniform and all the paraphernalia that go with an army life. To be sure, this cannot be underestimated; army training, drill and discipline is a strong cohesive factor. But it does not insulate the soldier from the daily influences of the more vital social contacts in the African context.¹ Col. Afrifa, who subscribes to ~~to~~ the view that ^{the} army must be kept out of politics, nevertheless writes: "I know that in Ghana people normally underrate the intelligence of the soldier. This has a

1. As one officer put it to me in the course of the an interview, 'there is no such animal as "the army" separate from society. I have relatives and friends outside the army whose daily problems concern me as much as they concern any civilian. What distinguishes the army man from the civilian is that he feels a certain pride to belong to a body which is the defender of the nation - that is all. But this does not destroy everything else.'

long tradition. The British army did not at first attract the most able of our men. To our people, therefore, it seemed ^{that} only the failures in our society joined the army, that only the ones who did not go to school, or were not able to till the land, or were disobedient to their elders, put on the white man's uniform. A new army had however grown in Ghana, an army of men who were no longer failures but part of a great country that had won freedom from British rule. An army that has come to identify itself with the aspirations of the people. An army that shared their sufferings, their joys and their hopes for the future.¹ After making some laudatory remarks on the British army tradition, Afrifa goes on to say that the Ghana army had among its ranks men who "had begun to ask questions about our country, about Kwame Nkrumah, about the Convention Peoples Party and its intentions."² In short the army did not see its place limited to the barracks or to the battlefield.

1. A.A. Afrifa, op.cit. p.93.

2. ibid.

Thus the professional ethic which was developed in different systems over a long period of time and which subsumes other socio political bases, cannot act as a barrier against military intervention in the politics of African states. As already stated, the motives may vary from place to place and they may be rationalised. The military men may also declare, as they always do, that they will stay in power for a short period long enough to "clear the mess". But, as we shall see below, none of the military coup leaders have returned to the barracks of their own free will. Some observers have even gone to the extent of solemnly declaring that "Africa has entered the era of pronunciamientos".¹ The great number of coups and the quick succession of the events certainly lends credence to such assertions. And there is some evidence in the post-coup behaviour of the military executives which suggests that they have come to stay for some time. Whether more civilian heads will fall is a matter of conjecture. One thing is certain, violence begets violence, and to every coup there may be a counter-coup.

1. Cf. *Rév. française d'études politiques Africaines* (Jan. 1966, No. 1, p.3.

The professional ethics and the apotical role which it assumes does, of course, have implications, looked at from the angle of the military men/^{as} a corporate group. While such corporate existence cannot ward off the impact of factors mentioned in the foregoing paragraphs, it does create a certain pattern of "interest" which responds to certain threats. Keeping politics out of the army and the army separate from politics, as major general Alexander has called it,¹ was one of the lessons which was sedulously inculcated in the armies of Europe and hence in the colonial army. It is a lesson which can easily be recalled and invoked by army leaders when they feel civilian politicians are encroaching in what they consider to be their preserve. One of the consequences of what has elsewhere been called the politics of mobilisation, where the primacy of politics asserted, may be a sharp reaction by the army where it feels its corporate existence is being threatened. This comes out clearly from the writings or utterances of some of the coup leaders.²

1. Cf. H.T. Alexander, "African Tightrope", Pall Mall Press, 1965.

2. E.g. Col. A.A. Afrifa's ^{book} (op.cit) is an example of how intricate the question of motive for intervention can be. Afrifa's resentment to "political" interference in army affairs, personnel and strategy comes out in his denunciation of Nkrumah's Congo policy - as he saw it, and in Nkrumah's dismissal of general Ankrah. Acts which a Ghanaian who approved of Nkrumah's Congo policy may have justified, are condemned by an officer who saw them through military spectacles and in terms of military corporate interest.

Attention needs to be paid to the question of the relationship of the political party and of the armed forces, ~~needs~~, particularly in one party-states. Since the chief executive provides the meeting point between these two factors, the problem is central to the whole subject of the executive.

We will now present some case-studies of military coups in Africa. Then in the second Chapter we will examine the ^{structure} ~~activities~~ of the ^{executive} ~~military~~ "division" in some of these States.

2. The Military Coups in Africa

The Beginning

Egypt. The first coup d'etat in Africa took place in Egypt, in July 1952, when the monarchical regime of King Farouk was overthrown. The Egyptian coup was a military coup in its execution but in terms of its conception and impact it was a revolution which abolished an old order - and with it the sense of humiliation suffered by the Egyptian people in centuries of alien rule. It ushered in a new era of social and political life in a way comparable to those of the French and Russian

revolutions. The difference from these lies in the fact that the Egyptian revolution was bloodless. It is clear that Nasser and his fellow Free Officers conceived of a swift bloodless coup as a way of securing control of the state apparatus before proceeding to sweep the Aegian (or rather the Egyptian) stables - an act which the officers were determined to carry out from the very beginning.¹ Nasser and his fellow "Free Officers" had planned the coup for over seven years in secret against heavy odds. As one observer has reported: "they had a clear idea of what they wanted to destroy in Egypt - the monarchy, the power of the land lords, foreign influence and the corruption of political life - and they had a vision of the kind of society they wished to become. But they had had very little time to consider the political techniques needed to make the vision a reality."²

1. Cf. his book "The Philosophy of the Revolution", Cairo, 1954.

2. Peter Mansfield, op.cit. p.43.

The Egyptian revolution has had a profound effect in Africa. Nasser's stature has played a part in this influence. The constitutionalisation of his regime went a long way in creating confidence and stability. Legitimacy was achieved, as was mentioned before, through popular election of the president and the assembly. This has indirectly helped to establish the coup d'etat as a vehicle of gaining political power. Any coup, by definition, involves a hiatus from constituted authority - a break of legality. Demilitarisation is therefore necessary to establish legitimacy. In other words, the monopoly of physical force which the new regime enjoys has to be legitimated. This is a matter of great moment for any military regime. It is not mere legality which is at stake; legitimacy in this context should be understood to involve practical questions of the survival and effectiveness of the regime. For, otherwise, it will be possible for any body of people to challenge the basis of its authority and use the same method to overthrow it. The answer to such challenge cannot be physical force only; or if it is, it cannot continue indefinitely.

The leaders of the recent coups in Africa realise this, judging by their declarations that there would be a return to constitutional government. In the meantime they govern by decree, and it is a matter of some doubt whether they will give up power soon. In Egypt it took over ten years for President Nasser to produce the celebrated National Charter which was the basis of the Constitution under which the National Assembly and later the President were elected. The length of the period may be partly explained by the nature of the change which, in the case of Egypt, was fundamental. In any appraisal of the behaviour of the military regime the nature of the change they brought about and the sense of mission they espoused must be taken into consideration. By behaviour of the military is meant here the speed and degree of demilitarisation or alternatively a greater role played by the army in the political life of the nation. In Egypt, after the coup, Nasser and his fellow Free Officers had two alternatives before them. One was to go back to the barracks hoping that with the removal of King Farouk, all would well. The other was to stay in power and govern the country themselves. Their mission, however, was more than the removal of a corrupt king and his

Court. As long as Egypt's social system remained unchanged nothing would change. The WAFD party which had begun with promise earlier had become hollow and discredited. So the new leaders were left with the second course which they followed relentlessly. This had appeared to them as the only solution long before the coup, and every one of their subsequent acts confirms this - including the climax of the revolution, namely the national Charter, and the transformation of the military regime into a constitutional authority.

This brief account of the UAR here is justifiable to the extent that it has had an impact on the others. Otherwise it falls in the area of constitutional presidential systems under which it has already been discussed.¹

1. Another aspect of UAR politics which is beyond the scope of this study, but which has had an effect on Egyptian life is its involvement in Middle East politics. This has led to some unfortunate and wasteful adventures which have been costly in lives and money, and have in turn complicated internal policy.

The Sudan

The next military coup in Africa took place in the Sudan, where General Ibrahim Abbhoud intervened in November 1958 to put an end to the inter-party strife which had paralysed the Sudan government since its independence two years previously.

The first political party was formed in 1938 when the Graduates Congress of the educated Sudanese was founded. But sectarian (religious and ethnic) factions reappeared when elections took place. These factions which had been buried in the common struggle for independence before 1956, reappeared soon after, dominating politics in the national parliament.¹ In spite of their modernity and national aspirations the leadership depended for support on tribal groups, with the result that different combinations of coalition government proved unstable. The economic problems caused by poor cotton crops and its falling price in the world market added to the crisis.

1. The main factions were the Ansars (followers of the Mahdi) and the Khatmiyas (followers of Mirghani) Cf. B.S. Sharma 'The Sudan', in the politics of demilitarisation' - collected Seminar papers of the University of London Institute of Commonwealth Studies, April-May 1966, pp.32-40.

Abbhoud's intervention was made at the request of Abdallah Khalil, the prime minister, in the hope that his party (the Umma) could come back to power after the soldiers had dealt with the opposition. This was not generally known when he took over, and the public seemed to have been pleased because parliamentary government had done nothing but foster strife and division. The military junta did not declare any ideology, but they laid stress on the "reintroduction of moral values in the national politics" and appealed to ~~the people~~ the public over the heads of political parties and politicians.¹ They also declared an intention to go back to the barracks which added to the general satisfaction.

As it happened Abbhoud and his men were in no particular hurry to go back to the barracks. Their Egyptian counter-parts were still in power, they must have felt, so why should they hand over power to civilian politicians who were still divided, in any case. The military regime was itself divided and engaged in an internal power struggle, during the first twelve months.

1. *ibid.* p.33.

There were abortive counter-coups which were caused by personal rivalries. In the last of these attempted counter-coups, five young officers were sentenced and executed. And, such executions came as a great shock to the Sudanese people who began to question what an observer has called "the legitimacy of the army".¹ It appears that such a legitimacy had been assumed for the army on an understanding that it would put "the house in order" and then withdraw to its barracks. But as the regime started showing its real nature by suppressing basic liberties and declaring a state of emergency, a current of dissatisfaction began among the politically conscious. Press was censored and all political parties and demonstrations were banned. Some political leaders protested, petitioning for the return to parliamentary government. For this they were detained in a remote southern town.

General Abboud and his Supreme Council of the Armed Forces, composed of twelve members and himself as Chairman, ruled the Sudan for six years. The Supreme Council nominated a Council of Ministers and took over the whole bureaucratic machine, inserting military

1. ibid, p.34.

personnel for general supervision and control. The close involvement of the military in the administration laid it open for charges of corruption, which added more fuel to the fire of civilian resentment. However, when the regime was swept out of power, the burning issue which acted as a critical factor in precipitating the revolt was the question of the Southern Sudan. General Abboud's regime was overthrown by a civilian uprising in October 1964.¹ This revolt has the unique quality - unique in Africa - of being the first in which the military regime was overthrown by civilian uprising. For that reason alone ~~it~~ something more must be said about it.

It is ironic that a military regime should be overthrown on a question involving law and order. The Southern Sudan was in a state of rebellion, which the military regime was unable to quell. The problem was political but had been transformed into a military one during Abboud's reign; and it was natural ~~that~~ that when a military regime failed to solve a military problem, such failure should seal its doom. What is the good of the military, after all, if they cannot put down a rebellion.

1. Many Sudanese fondly refer to the event as "the October Revolution."

With political meetings banned and leaders in detention, it was left to university students to offer solutions. The students of the University of Khartoum proceeded to do this by holding a conference on the problem of the South. But their efforts were frustrated by obstruction from the police. A clash between students and police took place, followed by a large-scale demonstration staged by the whole student body and some members of the staff. Again, this met with polite resistance and further clashes took place resulting in the death of two students. The situation became charged with deep emotion which was demonstrated by the huge turn-out at the funeral of the two students killed by the police.¹ A general strike was called by a revolutionary committee set up in the university and the response was swift and total. The whole country was paralysed causing shortage of vital supplies such as food. General Abboud saw the hopelessness of the situation, gave in and agreed to hand over power to a caretaker government, until an election was held, and a new government formed.

1. I have it from an eye-witness account that hospital nurses and dressers refused to treat members of the police who were injured during the clash.

The election took place later, and the Umma party formed a civilian government.²

The New Trend

The next military coup, and one which set a new trend in post-independence Africa took place in Algeria, in June 1965.¹ The Algerian coup d'etat of June 1965 marks a turning point in African politics in the post independence era, in the same way (though in an opposite sense) that the Nkrumahist constitution of 1960 was a turning point in African presidentialism. The Algerian coup set an example on the political behaviour of the army in Africa which could be interpreted as a response to situations where African presidentialism had either over-reached itself or was not able or willing to cope with

1. There had been army mutinies led by non-commissioned officers: (1) in Togo in January 1963, in which the President, Sylvanus Olympio ~~was~~ killed; (2) in East Africa in January 1964, which were put down with the aid of British troops sent at the request of the governments concerned (i.e. Tanganyika and Uganda). There was also an old-style revolution in Zanzibar which deposed the Sultan in January 1964; and before that there was a revolt in the Congo (B), in August 1963 organised by the labour unions and radical militant groups, which resulted in the overthrow of the regime of President (abbé) Fulbert Youlou. Two abortive coups must be noted viz. (a) the Ethiopian attempted coup of December 1960 and (b) the attempted coup in Gabon in February 1964 which was suppressed by French troops sent by President de Gaulle at the request of President Leon M'ba.

with critical problems. We will consider some of the significant factors and events leading to the coup in Algeria, and follow it up with similar considerations on the coups of the Congo (K), Nigeria, Ghana and Togo. Togo will serve as an example for the other Francophonic states which have suffered coups (i.e. Dahomey, Central African Republic and Upper Volta), as the coup of Togo has certain features which are representative of the others. Also the short account given earlier on the Sudan revolt and the Uganda coup (given in chapter three) will be sufficient for our present purpose.

(i) Algeria

President Ahmed Ben/Bella was deposed by Col. Houari Boumedienne, his Minister of Defence and one-time ally in his (Ben Bella's) struggle against Youssouf Ben Khedda for the Algerian leadership. The coup was achieved by turning a military exercise into an operation thus averting suspicion and catching the government unawares and securing all strategic points in surprise.¹

1. Some units of the army were out taking part in the film on the battle of Algiers. This avoided suspicion.

The pretext given by the putschists for their take-over was that President Ben Bella had set up a dictatorial regime. The previous cabinet was substantially retained with a reshuffle.

The event created strong reactions among students and other organised bodies who staged protest demonstrations in Algiers and other big cities, and were involved in clashes with the military. This lasted for over a week. Soon afterwards a resistance movement was formed, calling itself 'l'organisation de la résistance populaire' (ORP). Some months later another opposition group emerged under the name of 'l'organisation clandestine de la révolution Algérienne' (OCRA). OCRA stated that it was against military dictatorship and in favour of the establishment of constitutional legality.¹

The fate of Ben Bella and his presidential regime is linked with the fate of the FLN (front de libération nationale) which we need ^{to} consider in order to get a clearer perspective of the events. The FLN was, by its origin, a political movement which served as the embodiment and the driving force of the Algerian struggle for independence between 1954 and 1962. It was a movement

1. Cf. The Middle East Journal, Vol. 20, No. 3, Autumn 1966, p.364.

forged in a struggle - in armed combat against superior military power. Though united by this common factor, its leadership was nonetheless composed of some disparate elements; ranging from moderate liberals like Ferhat Abbas and Ben Khedda (who were middle class professional men) to Mohammed Boudiaf and Ben Bella himself, who were militant left wing socialists. Nor was the internal division limited to the ideological plane. Ben Bella and Boudiaf were locked in personal rivalry and animosity. The Arab-Berber division was also an element present though kept in the background. The FLN was thus not a political party, monolithic and disciplined in the Leninist tradition. It was a liberation movement. With the achievement of independence in June 1962, the FLN lost much of its drive and sense of direction. The tension which had been subordinated to the common goal during the struggle began to break out. The division emerged during the Tripoli meeting of the FLN National Council (CNRA) in June 1962. Nevertheless the FLN survived the tension and came out with a general programme which came to be regarded as its guide for political action. Th

The essential elements of the Tripoli programme were (1) that the armed combat should give way to an ideological combat and peaceful reconstruction of the Algerian Nation along socialist lines; (2) this task of peaceful reconstruction would embrace every Algerian, irrespective of class origin; and that Algerian culture would be "revolutionary, national and scientific"; (3) the leadership would foster an agrarian revolution involving modernisation of farming and giving land to those worked in it; (4) the FLN would sponsor the nationalisation of credit, foreign trade, mineral resources and resources of energy; the FLN would also direct programmes for the realisation of social aspirations, including the improvement of the standard of living, elimination of illiteracy, emancipation of women, etc; (5) the FLN in foreign affairs would be in the forefront, assisting liberation movements, ^{against} ~~in~~ fighting imperialism and for Arab and African unity. The Tripoli programme was slightly modified by the charter of Algiers which was issued at the end of the first post-independence Congress of FLN (held April 16-21, 1964). The notable additions were (1) an emphasis on the doctrines of Islam and (2) the introduction of the idea of auto-gestion (workers management) of farms.

It was understood that the FLN would establish further guidelines of policy and maintain control over the government by assuring that the head of the government and the majority of the ministers were its members. The inference from this was that the cabinet would be responsible to the political Bureau of the party. These were the general policies with which all agreed. But the organisation of the FLN left much to be desired.

Ben Bella was aware of the weakness of the FLN; and he and his group conceived its role in terms of a party machine run by the political Bureau, which would continue to be responsible to the CNRA (Conseil National de la révolution Algérienne). He would be head of this party, which would be separate from the government. The government would be elected by the National Assembly, but since the party would nominate candidates to the Assembly, it would control the government. This conception of the role of the FLN was given constitutional expression under the 1963 Constitution. The Constitution provided that the FLN was the only party in the state.¹ The right to designate candidates for the National Assembly and to the presidency of the Republic were entrusted to the FLN.² The FLN was empowered

1. Art. 56.

2. Arts. 23 and 34 respectively.

to define national policy, inspire the actions of the state and control the National Assembly and the government.¹

But the constitution had apparently enshrined a myth. In the process of attempting to create a disciplined party with unquestioned leadership Ben Bella had alienated many of the most important leaders who commanded large followings, like Mohammed Boudiaf, Bel Krim Kacem, Ait Ahmed, Mohammed Khider and Rabah Bitat. The moderates like Ben Khedda and Fernat Abbas left earlier. These leaders many of whom were founding members of the FLN, quit one by one either through resignation or dismissal, leaving the FLN to be filled by less qualified and more opportunistic members.²

This state of affairs created more confusion than confidence among a war-weary and jobless mass of Algerians. Then there was the ALN (armée de liberation national). The ALN had been the military arm of the FLN during the struggle. It was trained and organised mainly out of Algeria, and during the struggle, operated from the neighbouring states, in consort with the Willayas (the military districts) which operated guerilla

1. Art. 59.

2. Cf. W.H. Lewis, 'The Decline of Algeria's FLN' The Middle East Journal, Spring 1966, vol. 20, No. 2, pp.161-172.

war within Algerian~~x~~ throughout the struggle. But the ALN, which was better trained and organised, emerged towards the latter days of the struggle as a tightly knit professional army.

Meanwhile with the mass exodus of French settlers, vacancies had suddenly materialised in the government service which came to be filled by Algerians. The army which commanded a high prestige in the country was also reasonably well off in salary and related matters. The new civil bureaucracy also had stepped into a new and comfortable life. In short a new class was born into a new way of life, and the army and civil bureaucracy shared this new life. As these new centres of power and interest emerged a divided and debilitated FLN could no longer attract any significant following. Ben Bella still enjoyed popularity among the masses but, in the absence of a ~~xxxxxx~~ ~~and~~ vigorous party, his call could not get any meaningful responses. In the face of unresolved economic problems and particularly unemployment, some of his policies (especially his foreign policy) were seen with growing scepticism by the army.

Strains had appeared between Ben Bella and Boumedienne which must have had a cumulative effect on

the decision about the coup d'etat. Boumedienne wished a more direct role for the army in the formulation and execution of policy.¹ This could mean that even assuming that Ben Bella had succeeded in cementing a united FLN leadership in the framework of a newly defined role of the FLN as a political party, the army would have eventually wished to intervene in politics. On the other hand, such a demand may have been made because of the division among the FLN leadership. Whichever is the more likely reason Ben Bella had clearly left his position and that of his civilian regime vulnerable by his undue dependence on Boumedienne, particularly at a time when he was "purging" the FLN leadership. Boumedienne watched the FLN leaders - the "chefs historiques" among them - leave the FLN one by one, and Ben Bella get increasingly isolated.

Ben Bella realised this and had gambled on Boumedienne's loyalty and "safeness". It was a gamble that could have perhaps paid off had he acted swiftly and struck the right target first. He started his purge of Boumedienne by peripheral attacks. In October 1963 he had appointed Col. Zbiri, chief of staff of ALN

1. *ibid.*

while Boumedienne was visiting the Soviet Union. In 1964 he himself assumed control of the Ministry of Interior precipitating the resignation of Ahmed Medighri, a Boumedienne supporter. He then announced plans to form a people's militia, and to reshuffle the cabinet. And then by the end of that year (1964) he made his intention known to a confidant that he would remove Abdel Aziz Boutefflika, minister of foreign affairs and the most influential protégé of Boumedienne¹. The announcement of a cabinet reshuffle shows Ben Bella's position to be threatened from another front, that of his cabinet colleagues. The decision to create a militia was clearly designed to redress the balance against the ALN; but it was obviously a serious tactical mistake, whatever its substantive merit. All in all it was an unhappy position. By then Ben Bella may have seen evidence of Boumedienne's political ambition. He took initiatives to reconcile with the Opposition created by his former comrades-at-arms, notably with the F.F.S. (Front de Forces Socialistes) led by Ait Ahmed whom he had pardoned by commuting a death sentence passed on him for armed rebellion, to a life sentence. The military wanted Ait Ahmed's execution.

1. The confidant turned out to be a secret agent of the Boumedienne group.

But the motivation of the Algerian coup cannot be explained simply in terms of personal ambitions. It contains several of the other elements mentioned before: personal, corporate, and national interest, the latter, of course, as interpreted by the army, and by Boumedienne, in particular.

The history of the struggle for liberation and the massive social and economic disruption which it brought about undoubtedly increased the magnitude of the problems faced by Ben Bella's government. The failure of the FLN as an effective party was emphasised (if not caused) by Ben Bella's style of leadership. His flamboyance and charisma appealed to many, and his foreign policy initiatives in particular his advocacy of more military and other help to African liberation movements endeared him to millions.¹ But ~~things~~^{this} was evidently not favoured by his military high command. It is conceivable, of course, that the army stepped in (partly at any rate) in order to provide the supreme corporate leadership which the FLN failed to do. Clearly the party

1. Cf. his speech to the O.A.U. summitⁱⁿ May 1963, Addis Ababa where he made an impassioned appeal "Let us die a little so that more will be free."

system of the FLN and its relation with the government was found wanting. Some observers have put this failure against a more complex background: "the rise and decline of the FLN mirrors the painful process of social change in Algeria as well as the dislocations, contradictions and incompatibilities which more than seven years of conflict with France have produced", ¹

The response of the population to the military regime was ambiguous. Politically conscious sections are dissatisfied ~~with~~ⁱⁿ the army rule as can be seen with constant threats of strikes and arrests. The underground also persists, as the recent assassination of Mohamed Khider, and the series of ministerial resignations show.²

Boumedienne's regime, on the other hand, seems determined to obtain a popular basis of support, as witness the time and effort it spent in preparing and organising the municipal elections of February.³ It is also making determined efforts to improve the economic condition of the country. There are legitimate activities

1. W.H. Lewis, op.cit. p.161.

2. Bachir Boumaza (minister of information), Ali Mahsas (minister of Agriculture) and Mohammed Smain (minister of Reconstruction and Housing) resigned and joined OCRA, in the course of 1966.

3. cf. Le Monde, February 1967.

of government, and are not in themselves proof in the future intention of the leaders, one way or the other. On the other hand, the address of Boumedienne delivered before the assembly of the six hundred and seventy-five presidents of the recently elected municipal bodies is one index of his intentions. He has declared notably that "the elections should not be considered as a political action designed for foreign consumption".¹ In the same address he announced the rejection of the constitutional structure of the previous regime including presidential election, election to the national legislature and referendum, because (sic) these had served to consolidate "une certaine forme de pouvoir personnel, une certaine tendance deviationiste."² The address contained attacks on the policy of the previous regime claiming that the socialism which the new regime is following is one based ^{on} "authentic norms", with "realism and seriousness", and without any "forms of demagoguery and all facile attempts to gain popular favour."³ Boumedienne could also be

1. Le Monde, March 1, 1967.

2. *ibid.*

3. *ibid.*

accused of attempting to gain popular favour, now. But the essential point is whether some material improvement in the economic situation will be made. The extent of the problem is recognised by the government. The official daily, El Moujahid has reported as follows:

"The Algerian economy is incapable of responding to the essential needs of the population: employment and food (consumation)...It goes on "in relation to the total active population less than one person in four is more or less employed. It is in this sense that it can be said that work is an exception in Algeria".

Figures show that out of a rural population of seven million which has an active population of between 1.2 to 1.3 million only 250,000 are permanently employed. The rest are unemployed or under-employed.¹

The problem is acute and in the face of this reality the performance of the government will be judged by the number of jobs it creates, and the houses and schools it builds. Ultimately all governments are judged by the fruits of their actions, and their service, which becomes the first task of "legitimacy" in such situations.

1. Jan 12/1967

(ii) Congo (Kinshasa)

General Joseph Mobutu, Commander-in-Chief of the Congolese army led a coup d'etat in November 1965, ousting President Joseph Kasavubu, and his prime minister Evariste Kimba. Mobutu took Kasavubu's place and replaced Kimba¹ by Col. Mulamba, of the ANC (armee national congolais). The rest of the cabinet was retained. Mobutu announced that parliament and the provincial assemblies would continue to sit and that elections would be suspended for five years during which time he arrogated power to himself to rule and prepare a new constitution.

The event was preceded by several weeks of government crisis and a state of partial paralysis of the administrative machinery. The Congo had suffered more upheavals than any other African state in the post-independence period. The chief cause is well known: a stubborn refusal of the colonial government to prepare the Congolese educationally and administratively for independence. This ~~was~~ general absence of preparation was aggravated by the vengeful act of mass withdrawal of Belgian colonial officials, at the moment of independence.²

1. Kimba was later hanged with others on charges of treason, after a trial lasting a few hours.

2. The Belgians were not alone, in this type of conduct. France "punished" Guinea (and later Mali) by similar withdrawals plus destruction of vital medical and other supplies and documents, when Guinea chose independence in 1958.

Congo became independent on June 30, 1960, and on July 12 of that year the Force Publique mutinied. One of the few high ranking Congolese officers in this army, called the Force Publique was a young sergeant called Joseph Motubu, who was engaged in civilian work at the time. The Prime Minister, the late Patrice Lumumba, appealed to the United Nations to help restore law and order. Thus began the tragic story of "independent" Congo. Katanga later seceded and the UN intervention became a full scale involvement in a civil war. Mobutu's Congolese army fought throughout the five years of the war, and the final phase of the war to end the secession of Katanga helped create a sense of unity in this army.

After the end of secession of Katanga, Tshombe, the prime minister of the secessionist government, and perpetrator of the secession was asked by Kasavubu to form a government of the Congo. The motive is clear. It was felt by Kasavubu and his advisors, that there would be no permanent peace and no unity in a country like the Congo with three widely separate centres of power, (Leopoldville, Stanleyville and Elizabethville),¹ and as long as these places were held by people with differing ideas or interests. So they decided to use Tshombe as the beating stick against the Stanleyville

1. Now renamed Kinshasa, Kisangani and Lumumbashi, respectively.

"Lumumbists". Tshombe accepted the invitation, formed a government and, using white mercenaries, eventually crushed the rebellion. He then decided to form a new party which appeared in February 1965 under the name "CONACO". CONACO was, in fact, a projection onto the national arena of his old Katanga party, the CONAKAT. It embraced a coalition of forty-nine other political formations, and relied on the support of traditional elements. At the general election which followed CONACO emerged with the largest number of seats - a fact that threatened to assure Tshombe control of parliament and eventual election as President of the Congo. When it was known that Tshombe had his eye on the presidential office, Kasavubu declared that he would offer himself for re-election.

A series of events followed in quick succession which showed the conflict between Tshombe and Kasavubu. Election results in three provinces were quashed by the Court of Appeal to CONACO's loss. But Tshombe was still strongly placed. Then in July 1965 Kasavubu gave the Interior Ministry to Victor Nendaka over ^{Prime}minister Tshombe's protests. Nendaka had been elected on a CONACO list of candidacy, but quit CONACO, presumably at Kasavubu's suggestion and offer of a key ministry, and formed an

anti-Tshombe front (Front Démocratique Congolais) helped by other politicians. When parliament met President Kasavubu asked Tshombe to dismiss his provisional government so that a broader-based government could be formed. Tshombe refused to resign and on October 13, 1965 Kasavubu dismissed him and asked Evariste Kimba to form a new government.¹ The whole episode is full of shifting allegiances and political sommersaults. The events that followed after October 13, show parliamentary government at a most farcical aspect. After a long series of consultations, Kimba presented his team for investiture to parliament on November 14. Tshombe's strength was demonstrated when Kimba's "government" was rejected by a vote of 134 against 121 and seven abstentions.²

Kasavubu, who had dismissed Lumumba and got away with it, was not one to budge an inch. He asked Kimba to start all over again and form another government. CONACO attacked his decision in a press release, "...the political Bureau of CONACO" it declared, "could

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1. Kimba was one of Tshombe's chief lieutenants during Katanga's two and a half years of secession. He was later hanged with others on charged of conspiracy to overthrow the Mobutu regime.
 2. Cf. B. Kalongi and Z. Kirbidi, 'Eléctions Force et Parlement 1965', *Études Congolaises*, Jan-Fev. 1966, pp.1-5.

not tolerate that consultations should be limited, whereas in democracy the parliamentary group which defeats a government is always necessarily called upon to form an alternative government."¹ This is true enough in principle. But under the Congolese constitution the president is the chief executive and the prime minister is appointed and dismissed by him. A campaign of mutual vilification over press and radio followed.²

Then on November 25, 1965, the army coup took place. The communiqué of the army high command stated that it seized power: "After having witnessed the failure of the civil authorities, who only thought of their fight for power, neglecting the interests of the country." This was later elaborated with a view to gaining general popular acceptance.³

(iii) Nigeria

Nigerian coup d'état took place on January 15, 1965. It was organised by a small group of officers and men led by five majors.⁴ The group struck throughout

1. *ibid.*

2. It is claimed that Tshombe had tried to seize power by a coup d'état on Nov. 1965 aided by an unnamed foreign government. *ibid.*

3. In a document entitled "De la légalité à la légitimité" appearing under Mobutu's name. It contains certain policy statements which will be examined later.

4. The size is estimated at 200 cf. K.W.J. Post 'The Nigerian Case' in the politics of demilitarisation, University of London, Institute of Commonwealth Studies, collected Seminar

Nigeria with remarkable speed and co-ordination. In the north they killed the powerful Regional Prime Minister, the Sardauna of Sokoto, Sir Ahmadu Bello. In the Western Region they killed the Regional Premier (and ally of the Sardauna), Chief Akintola, and kidnapped the Federal Prime Minister, Sir Abubakar Tafewa Balewa, and his finance minister, Chief Festus Okotie Eboh. The last two were killed later.

It is not yet clear what the leaders of the first coup intended to do once in power. The only broadcast made by Major Iizeogwu from Kaduna radio station spoke of ending tribalism, nepotism and corruption. The coup failed for various reasons. There is evidence to show that General Ironsi, the Commander-in-Chief of the Nigerian army was not involved, and that he was in fact on the list of key figures to be eliminated.¹ The General escaped, and in rallying round him a loyalist army, contributed to the failure of "the coup of the majors". It is also believed that the Federal Prime Minister was kidnapped with a view to forcing him to call on them to form a government. He died, while their prisoner or was killed by them, perhaps taking with him one chance of success for the coup. Instead the rump cabinet called

1. Post, *ibid*; cf. Also P. Keatly 'The Guardian' Jan. 26/27, 1966.

on General Ironsi to set up a military government, which he did. A few days after that the Northern leader of the coup, Major Nzeogwu agreed to surrender to the new government.

The coup d'etat which has shaken Nigeria has its roots in the ethnic, regional, religious and personal conflicts which plagued the federation. Corruption and thuggery, which were rampant, have also no doubt their part to play in the dissatisfaction that led to the drastic action of the majors. The assassination of the Sardauna of Sokoto and of Chief Akintola provides one clue to the motivation. The Sardauna of Sokoto was probably the most powerful figure in Nigeria. As ruler of the largest region of the federation and as head of the larger party (NPC) that was ruling the federation in coalition, he exerted immense power and influence. In the north, he combined, in his person, traditional autocratic leadership and religious (Muslim) standing. In the west, he connived at and succeeded in creating a partnership with Chief Akintola, after the latter had broken away from the Action Group.¹ The Prime Minister of the federal government, Sir Abubakar, was his deputy

1. Cf. Chapter four.

as head of the NPC, and many Nigerians openly claimed that he was his lieutenant in Lagos.

Although a military coup was not generally expected in Nigeria, in retrospect, ominous signs of things to come could be seen in the general election of October, 1965, in the Western Region. That election was marked by disturbances, leading to loss of life and bitter recriminations in which charges of rigging and intimidation were made. The supporters of Chief Adegbenro (Akintola's rival) were unwilling to accept the verdict returned by the ballot boxes. Many embittered Southern Nigerians felt a threat of northern (Muslim) domination, and saw in Akintola a willing tool of the Sardauna's machination for eventual, total control from the North. After the election disturbances of October, the Western Region became the real challenge facing the government of Sir Abubakar Tafewa Balewa. All Southern Nigerians (East and West) were united in the sentiments implied in this challenge. The fact that the majority of the officers of the coup were Ibos¹ is perhaps one evidence of the unity against the threat of a powerful Northern ruler. It is also borne out by the fact that the Sardauna and his ally, Akintola, were the first targets, as already pointed out.

1. cf. Nigeria 1966, publication of the Federal Republic of Nigeria, Lagos, pp.5-6.

The government of Sir Abubakar Tafewa Balewa itself - a ruling coalition of NPC and NCNC - had become thoroughly discredited for inefficiency and corruption, particularly among the young. It has been argued by some observers that when the young majors struck on January 1965, they acted politically as the arm of the young.¹ These officers were recruited in the late fifties and early sixties, and were not men who had seen long service in the army. They must be considered among those who least regarded themselves as members of a closed corporate entity (the army) existing independently of the rest of the society. Sociologically therefore they belonged to the intelligentsia - civil servants, teachers, graduates, school leavers, etc.² If this conclusion is correct - and it is hard to refute, especially in view of the political mood of the time before the coup - then it leads to another conclusion that the coup of the majors had a definite political purpose, motivated primarily by the national interest.

The failure of the coup saw the installation of General Ironsi, Commander of the army, a soldier of long service and with a professional soldier's attitude

1. Post, K. op.cit. pp.57-8

2. ibid.

to politics. He was placed on a position not of his own making, and his army was on thin ground in a country like Nigeria's size.¹ He therefore had to rely on the civil service, for the administration of the country. His top advisers included people like Messrs. F.O. Nwokedi (Permanent Secretary in the Ministry of External Affairs) and A.A. Ayida (Permanent Secretary in the Ministry of Economic Development). General Ironsi set up various committees to review the constitution, the structure of the educational system, the restructuring of the civil service and the future economic development, to mention the most important. The members of these committees were all civil servants and academics. As politicians were associated with a discredited regime, none were included in any of these committees. Indeed a decree had been issued banning all political parties and tribal organisations. The constitution was suspended.

Among the measures proposed by General Ironsi the Unification-Decree announted on Ma. 24, 1966 created the sharpest reaction in the North, where disturbances occurred on May 29. The background of these disturbances

1. The size of the army is 9,000 plus 24,000 police in a population of over 50,000,000.

and of the tragic events of July and September 1966 in which thousands were massacred is not entirely clear yet. The events of July involved the kidnapping and death of General Ironsi, and the death of many Ibos residing in the north. They also produced a counter-coup which installed Col. Yakubu Gowon to head a new military government in Ironsi's place. Col. Gowon is described by ^a publication of the national military government as "a soldier reluctantly in government" and as a "thirty-one year old son of a humble Christian evangelist of the Church Missionary Society in Zaria."¹ The same publication makes reference to other factors other than the civil service unification required by the Unification Decree ~~Society~~ as giving rise to the disturbances. Reference is made to the part played by "local petty contractors and party functionaries whose livelihood depended solely on political party patronage..." It is claimed that such elements were the hardest hit by the change in the government, especially those indebted to the Northern Marketing Board and the Northern Nigerian

1. Nigeria 1966 loc. cit.p.57.

Development Corporation were made to pay up their arrears. They thus resorted to whispering campaigns and incitement.¹

After the May disturbances an uneasy calm settled in the country. The atmosphere was charged with tension and mutual suspicion particularly in the army. "Political" rivalry within the army had assumed larger dimensions. The ethnic-regional factor had asserted itself as predominant, and entered the ranks of the army. It is claimed, for example, that regular channels of communications (in which the efficacy^{of the} chain of command depends) were being bypassed in the transmission of instructions.²

The details of the various incidents which led to the July and September massacre as well as the kidnap and death of General Ironsi have not been given yet.³

In the meantime, after a steadily deteriorating relation between the central military government and the Eastern government of Col. Ojukwu, resulting from the

1. *ibid*, pp.8-9

2. *ibid*, p.9.

3. The central government has promised to issue a white paper setting out all the details.

July and September events attempts were made to settle differences. In the East the problem of displaced Ibos coming mainly from the North was very grave.¹ Then the Aburri meeting was held to try to solve the problem of the future constitutional structure Nigeria should take - the centre-region relationship, the position of the central government in relation to the regions; the composition and function of the National Army etc. But the Aburri "agreement" did not resolve the differences - each gave a different interpretation to it and in particular to the future of the northern soldier's stationed in the south.

Charges and counter-charges of bad faith followed; these were followed by threats of secession or charges of such threats which were mostly denied but were sometimes confirmed conditionally.²

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1. It was claimed by the government of the East that as many as one million and eight hundred thousand Ibos have returned to the East leaving their properties.
 2. Ojukwu had declared that the East would only secede if attacked or blockaded. Cf. West Africa, April 15, 1967, p.507.

Then the Western region joined in the demand for the withdrawal of northern soldiers from its region. This was soon followed by a secession of the East and the declaration of a new state - Biafra. This is how matters stand now, with the central military government determined to "crush the rebellion" and with the new state determined to resist such attack would be foolhardy to prophesy on the outcome. But one thing is clear; the people who have created this new state speak and behave like men who have faced death, and with such people there is a natural tendency to go the whole hog, in any such conflict. By a curious irony, this feeling of having faced death and therefore in a sense really lived history usually characterises the mood of an army or a section of it before it decides to intervene in politics - to remove politicians, who, it feels, have lived off the land, while it faced death "in the front lines". But the parallel should not be drawn too far. A solution to the conflict in Nigeria is eagerly awaited perhaps by all Africa, as the outcome may have implications which extend beyond the Nigerian frontiers.

(iv) Ghana

In Ghana president Kwame Nkrumah was overthrown by a military coup on February 24, 1966, while he was away on state visit in China. The story of the coup has been told by one of the organisers, Col. Afrifa.¹

1. A. A. Afrifa, op.cit.

According to Afrifa, the coup was planned and carried out by turning a test exercise ordered in connection with Rhodesia into a military operation directed against the Nkrumah's government. Afrifa explains that since Nov. 1965 (after UDI) the Ghana army had been in a high state of readiness to move into Rhodesia at short notice. "We exploited this situation" he says "to deceive the intelligence system."¹

The coup was master-minded by Col. (later major-general) Emanuel Kotoka, who was a brigade commander in the Ghana army. Kotoka and his fellow-conspirators brought the police chief, inspector-general J.K. Harlley, into the planning. But the execution of the coup was carried out by Kotoka's brigade. The vital operation was led by Col. Afrifa, who secured the radio station. Afrifa recounts how ^{he} did this with eight men, while 116 men engaged the presidential guard at Flagstaff House which lay on the way to the radio station and which could not be secured because the Commander of the Guard, Col. Zanerigu, had managed to escape and alert his men.

1. *ibid*, p.32.

The guard gave in after a fight lasting two days.

Col. Kotoka announced the coup d'etat over the radio as follows: "Fellow citizens of Ghana, I have come to inform you that the military, in co-operation with the Ghana police, have taken over the government of Ghana today. The myth surrounding Nkrumah is broken. Parliament is dissolved and Kwame Nkrumah is dismissed from office. All ministers are also dismissed. The Convention Peoples Party is disbanded with effect from now. It will be illegal for any person to belong to it..."¹ This was followed by other messages. The event was greeted with some demonstration of relief on the part of a considerable section of the Accra population. The composition of those who took part in the joyous demonstration is difficult to establish. But what cannot be disputed is the fact that no civilian resistance expressed itself in any form.

A review of the statements and comments published or uttered on the Ghana radio shows an array of "reasons" given to justify the overthrow of President Nkrumah and his government. One of the earliest broadcasts following Kotoka's announcement stated: "The concentration of

1. *ibid*, pp.34-5.

power in the hands of one man has led to the abuse of individual rights and liberty. Power has been exercised by the former president capriciously. The operation of the laws has been suspended to the advantage of his favourites and he has been running the country as his own personal property."¹ General Ankrah, Chairman of the National Liberation Council followed this by a statement on Feb. 28: "...the right of the people to vote at a free general election for their own chosen candidates was reduced to a formal unpractical privilege of sanctioning the election of such candidates as Kwame Nkrumah himself nominated. His love for the arbitrary use of power... led him to whittle away gradually the independence of the Judiciary and to suppress academic freedom..."² The same broadcast also stated that too much money was spent to maintain a large force of security officers to secure Nkrumah's personal safety. Reference is also made to the establishment of a "private army" at an annual cost of £500,000 as a counter-poise to the Ghana armed forces. And again, there was a charge of "mismanagement, waste and unwise spending."

1. Radio Accra announcement by the army 24 Feb. 1966.

2. General Ankrah's broadcast, Feb. 28, 1966.

Many more charges and comments followed, and not less than fifteen commissions of enquiry were set up to investigate every facet of the activity of Nkrumah's government. Even if one were to question the validity of some of the charges, nonetheless, it can be assumed that those who made these charges believed them to be well-founded. It would be unjustifiable to dismiss them as mere post-coup "public-relation" stunt. For they would offer a clue to an understanding of the causes. Final judgement must be postponed until the full reports of the Commissions are published. At any rate, a detailed consideration of such is not within the scope of the present enquiry.¹

Many "reasons" are given as the cause of the coup - given officially, or by individual commentators. One commentator, reiterating the charges made by General Ankrah added that candidates were handpicked by Nkrumah and the central committee of the CPP and "forced down the unwilling throats of the electorate". He concluded

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1. For an illuminating study on some of the historical socio-economic forces which were at the root of the failure of Nkrumah's regime cf. B. Fitch and M. Oppenheimer: Ghana: End of an Illusion (New York and London, 1966.)

by saying "the blatant display of this trickery last June (1965)...must be accounted one of the direct causes of last week's overthrow of the corrupt regime."¹

More "reasons" are supplied by Col. Afrifa.² The criticisms levelled against the Nkrumah government, charged as they are with emotional content, cannot be passed unnoted, because they are indices of what went wrong. Afrifa refers, for example, to the suffering of the people on the basis of his own observation. He has written: "I came from the village, and I know the sufferings of my people. There were instances when even salt was in short supply. Sugar and milk were nowhere to be seen. No drugs could be found to cure the sick... Accra is organised in such a way as to give an impression of happiness and affluence; there were new streets and new lights, while vast areas of this country were planted with misery and suffering....I became convinced that Nkrumah had failed the nation. I had not liked the man since he imposed his party on the country. I again resumed my thoughts about a coup." The penultimate

1. Radio Accra, 1 March, 1966.

2. A.A. Afrifa, op.cit.

sentence is revealing as to the mixed nature of motivation for a coup. It is not possible to say which of the two reasons - i.e. the national shortage, and the imposition of one-party rule - weighed more heavily in the decision about a coup.. Possibly the two are inter-related. Again Afrifa complains of the suppression of human rights. In a statement given in an interview to the London Observer, soon after the coup, Afrifa said: "We've lived in Britain before, and therefore didn't like this dictatorship. There was no freedom of the press or of the individual - things we know are fundamental human rights." In the same interview Afrifa also stated that Nkrumah introduced party politics into the army - He went on: "He took a man with no training as an officer, a Mr. Hassan, appointed him a brigadier and put him in charge of military intelligence. Here we had a situation in which mess corporals were watching commanding officers and reporting them. What greater insult to our intelligence and patriotism."¹

1. The Observer, March 13, 1966.

Here, in the last remark, we have a clue to the most important factor, which is explained here in terms of pride and patriotism. Undoubtedly no civilian politician has a monopoly of pride or patriotism; the army has its share of both. But behind this there lies a more profound reason - group interest. The reflections of Col. Afrifa provide an invaluable material for a study of the motivation of army officers who lead coups d'etat. To an independent observer he proves that the motives of a coup are not as simple and clear cut as the first utterances of coup leaders try to make out. Afrifa makes reference, for example, to standards learnt at Sandhurst. His views on the role of the army and its relation to the political head and to political parties reveals the influence of his educational background at Sandhurst. But it would be a mistake to attribute his conduct and that of his fellow conspirators solely to an esoteric professionalism imbibed at metropolitan institutions of learning, though these have their share.

Afrifa, in fact, represents a new professional (elite) class whose training has been influenced by metropolitan institutions and values. This new class has an interest to preserve. The CPP and the

politicians, leaders of the CPP, presented a threat to that interest. The recurrent theme in Afrifa's reflections is the Ghana army as a corporate group whose efficiency and pride, and (above all) - integrity was threatened by political interferences. "The Ghanaian soldier", he writes, "is one of the finest in the world. He is gentle, kind-hearted, sympathetic, and resolute.The material to make the Ghana army formidable is available! We have the men. I always want to remain with the troops; the very sight of them gives me satisfaction. These are the men for whom above all else their country comes first. These are the men who made up the Ghana army during Kwame Nkrumah's regime. Becuase of bad planning, economic mismanagement and political interference, this army was rendered incapable, ill-equipped, and had virtually been reduced to a rabble."¹ This wounded professional pride is sometimes mixed with other sentiments. On the subject of Rhodesia, for instance, Afrifa volunteers an opinion thus: "I personally know that Her Majesty's Government was quite capable of dealing with the Rhodesian situation. I felt

1. The Ghana Coup. p.103.

that Nkrumah was making too much noise about the whole issue, especially by raising the peoples' militia and hurling slogans at everybody as if Rhodesia was his concern alone." He goes on: "But Nkrumah was a fanatic and it was wrong to take him for granted. We knew he was capable of making decisions of any nature. From concern for my troops I felt it would be criminal and purposeless to lead such an army of excellent soldiers ill-equipped, to fight an unnecessary war."¹

He had similar misgivings on the Congo operation. He complained of interference by politicians, and in particular, by Nkrumah in military matters. "I started asking himself" he muses, "what had gone wrong. We had lost lives in a struggle that was not ours, in a cause that was not ours. I was at the very beginning of my career, and perhaps not well-equipped to grasp the situation. I felt that general Alexander, the commanding officer was quite capable of handling the situation if only our politicians left him alone."² Yes, indeed, he was not well-equipped to grasp the situation of the Congo which was not only a military arena, as he saw it but a political arena involving international power politics.³

1. *ibid*, p.105.

2. *ibid*, pp.70-71.

3. Cf. Nkrumah's latest book: *Challenge of the Congo 1967*

It is clear that he missed the central point about the Congo and that he did not share the views of his head of State and those of the African leaders who had the same approach.¹

It is also clear that those and similar reflections of Afrifa are not those of an officer who saw his duty as "not to question why, but to do and die." Admittedly, the Congo experience was a frustrating experience to any intelligent and sensitive person like Afrifa. But that was not in itself sufficient to instil in the mind of a young officer thoughts of a coup. It must be seen together with the whole situation in Ghana and with position of the army and of officers like Afrifa in that situation. Again the way they see their position vis-a-vis the whole Ghana situation would be influenced by their educational background, as well as by their social background in Ghana.

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1. On the question of the Congo and the role of Ghana in it, It is worth noting that President Nkrumah followed a moderate course between the Casablanca States who withdrew their troops and the Monrovia group which supported the UN continued presence. Nkrumah's (English) commander, General Alexander commended his decision in keeping the Ghana contingent under UN command. Cf. Alexander, op.cit.

The situation was complicated by the role of the CPP. The CPP which had lost its popularity long before the coup had made attempts to indoctrinate the Ghana army with Nkrumaism which the army resented. A branch of the party was opened at the Teshi Military Academy for this purpose, and officers were required to join the party. Afrifa explains that he refused to fill the form " on the principle that the army must be above politics", and he goes on "the army and the police are the custodians of the nation's constitution. If the army was made to identify itself openly with the CPP and its ideology, it was bound to lose its self respect and independence of outlook."

In point of fact the role of the army as custodian of the nation's constitution and as being above politics is contradictory in conception. If the army's role is conceived as a custodian of the constitution it cannot be insulated from politics. Officers like Col. Afrifa "participate" in politics in spite of what they say about the army's role being above politics. Their "participation" may be negatively expressed in the sense of a rejection of CPP slogans or even serious programmes. As stated before, the general ills of society affect them in one way or another and they react to these positively

or negatively. Moreover if the army's role is seen as custodian of the constitution, in the Ghana situation there would have been a built-in rivalry between the army and the president of the republic who is declared to be the guardian of the constitution. A group which saw its role as custodian of the constitution would inevitably see "betrayal of trust" written across any political act of the president whenever such act displeased it for some reason or other. There is thus a gap between the position of the army as being above politics and as custodian of the constitution.

It appears that the CPP and Nkrumah himself committed a series of acts which threatened the integrity of the army as a group. The dismissal^{of} Col. (now General) Ankrah who was popular in the army is one example. The appointment of Col. Hassan as director of the military intelligence is another. On the interference of the CPP with the army Afrifa writes: "the army was virtually at the mercy of the politicians who treated it with arrogance and open contempt."¹

Again the creation of the presidential guards not only as a counter-poise but as a favoured army unit was

1. op.cit. p.100.

deeply resented, as witness these words: "we were also aware that members of the president's own guard regiment were receiving kingly treatment. Their pay was higher and it was an open fact that they possessed better equipment. The men who had been transferred from the regular army no longer owed any allegiance and loyalty to the chief of defence staff, but to Kwame Nkrumah who had become their commanding officer."¹ A policy of calculated balance within the armed forces seems to have been the basis of the creation of the presidential guard. This created mistrust without achieving its purpose.

However, no division based on ethnic balance was practised. Nor was the "tribal" question involved as a critical factor in precipitating the Ghana coup. Western observers have greatly exaggerated the "tribal" factor. When the coup took place, the first journalistic reaction was that it was an Ashanti coup, because Kotoka's brigade was stationed in Kumasi. But, as Afrifa (himself an Ashanti) remarks "the description is correct to the extent that the coup was planned in Kumasi by Col. Kotoka, Mr. Harlley and ^{my} himself. But Col. Kotoka and Mr. Harlley are not Ashantis. The Ashantis and the Ewes, their tribes, are, however, traditional allies."²

1. ibid.

2. op.cit. p.33.

A far more serious question was Nkrumah's decision to send cadets to Eastern Europe for military training. This was serious from the point of view of a Western-trained officer corp which felt its future position threatened. General Alexander has written that he had warned Nkrumah that this would split the officer corps of the Ghana army into two camps.¹ His opposition to this decision caused Nkrumah on Sept. 22, 1961 to dismiss General Alexander and the other British officers who were in the Ghana army. It is now known that the Ghanaian officers had been behind general Alexander and that they had been plotting Nkrumah's overthrow since 1961.² The Ghanaian officers' support of General Alexander and their bitter condemnation of Nkrumah's decision to send cadets to Eastern Europe should be seen not only in the light of their educational background, but in terms of how they saw it as a threat to the corporate unity of their group. This is not to ignore

1. Alexander, op.cit. p.92.

2. cf. Press release No. 4 Ghana Information Service, March 1, 1966. In this publication, the military rulers bitterly condemn Nkrumah's decision to send cadets to the Soviet Union.

or underestimate the importance of the other factors, and in particular some of the methods of the CPP including intimidation which at times degenerated into thuggery.

Indeed the internal problems of Ghana were projected onto the international scene in the minds of the army ~~officers~~. To some of them Nkrumah's advocacy of African unity and his support of African liberation movements seemed chimerical viewed with the spectacle of Ghanaian problems. The prestige of Nkrumah which was high in other parts of Africa, had gone down in the eyes of many Ghanaians, which explains the reactions of the post-coup period.¹

Afrifa, for example, condemns Nkrumah's stand on African unity at the OAU summit conferences at Addis Ababa, Cairo and Accra and blames him for having taken upon himself "unilateral military preparations on an issue that affected the whole Continent and the commonwealth." He claims that Nkrumah became unpopular among

1. To my astonishment, not one Ghanaian student that I have talked to in England both immediately after the coup and since has raised a voice, even in private conversation, to defend Nkrumah against some of the attacks made by the military regime or by Western Press.

the Ghana army because of this, and concludes somewhat vindictively with these fateful words: "they realised that he was sending them to war without proper equipment and without adequate preparation. The moment they started complaining I knew that the days of the Convention Peoples Party were numbered. At this time it became common conversation among the officers and the men that military action against Nkrumah's regime was the only solution."(*italics supplied*).¹

The Ghana situation presents a contrast to the Nigerian situation, ^{viewed} from several angles. The contrast is now the sharpest on the question of ethnic and regional conflict; Nigeria is plagued by such conflict which is absent in Ghana. The contrast between these two states existed before the coups. Nigeria had a federal structure where Ghana was a unitary state. Nigeria had a multi-party system where Ghana was a one-party state. Nigeria had a bicameral legislature and a dual executive where Ghana had a uni-cameral national assembly and a military executive. At a different level - at the level of ideas and political orientation - no two states in Africa could have been more opposed than the two, particularly in their

1. op.cit. p.105.

external policies. This could be seen in the question of the Congo and Rhodesia, for example.

From the point of view of the present inquiry the fact that military coups have taken place in the two countries underlines the point made earlier that there is no one simple cause of a coup d'etat. Whatever the form of government, and the nature of grievances which spark ~~it~~ off the discontent it can be reasonably concluded that military intervention will be inevitable, unless there is a solid popular base for the policy and action of the government, with a solidly built and viable political infrastructure firmly rooted in the society. The one-party system is one way of creating such a solid base. But where the government had moved further away from the source of its power, depending entirely or chiefly on its state apparatus of control, and where under such circumstances the party becomes discredited as a mere agency of control, more grievances would be created. And military intervention would not only be inevitable, in such a situation, but the people, far from resisting, would organise street demonstrations in support of the military. Such appears to have been the case in Ghana. The three days' demonstrations which followed the coup may have been

organised by the new rulers, but it is hard to explain the reaction of the secretariat of the Ghana trades union congress (which had resisted wage demands for the past three years while food prices increased as much as 400 per cent), ^{which} declared ^{its} ~~their~~ support for the new regime. "In the name of the workers" the secretariat greeted "with greatest satisfaction the deliverance of the country and the end of dictatorship and economic chaos."¹ Fitch and Oppenheimer have commented on the apathy of the CPP in the face of the coup as follows:

"The Convention Peoples Party(CPP) with its two million members and 500,000 militants, all pledged by oath to support Dr. Nkrumah, organised no resistance at all. The CPP had been founded in 1949 when Dr. Nkrumah together with communists and militant nationalists decided that only a mass-based party could carry out the struggle against British colonialism. In 1956, it helped launch the first general strike in sub-Saharan Africa. The strike forced the concessions which brought Dr. Nkrumah from Fort James prison to the position of "Leader of Government Business" ~~in~~ in the first popularly elected parliament in Colonial Africa. Now, after 15 years as Ghana's ruling party the CPP allowed itself to be dissolved by a simple decree announced over the radio. The day after the coup, the generals wound up the affairs of the CPP by simply announcing over radio Ghana: 'All persons who find themselves in possession of vehicles belonging to the ex-party, the CPP, are requested to return them to the nearest police station.'"²

1. cf. Fitch and Oppenheimer, op.cit. p.2.

2. op.cit. pp.2-3.

And that was that, until April 1967, when an attempt was made at a counter-coup, by young military officers. The attempt failed, but the young officers killed General Kotoka.¹

(v) Togo

In Togo the army took over power from President Grunitsky on Jan. 13 1967. It was led by Lt. Colonel Etienne Eyadema, the chief of staff. President Grunitsky announced his voluntary withdrawal from office, and Col. Eyadema declared in a proclamation that the army had taken over full responsibility "in order to stop the political confusion" which he said was creating a "psychosis of imminent civil war." The constitution was suspended, the national assembly dissolved, all political activity was prohibited and a state of emergency declared.

A "committee of National Reconciliation"² was set up on the following day and Col. Eyadema promised that this committee would try to create within three months the conditions necessary to enable free elections

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1. Not much is known about the details of the attempted counter-coup. Two of the leaders, two lieutenants were executed after a summary trial. General Ankrah has ordered an investigation on the affair.
 2. The variety in the terms used for the committees is of interest. In Nigeria the committee was called the Supreme Military and Federal Executive Council, in Ghana it was called the National Liberation Council; in Sierra Leone it was called the National Reformation Council. Some of the terms (such as the last two and the

to be held and that the army would surrender power to civilians in due course. The Committee which consisted of eight included three former members of the previous cabinets under President Grunitsky. It was presided by Col. Kléber Dadjo who was in charge of defence, and foreign affairs, while one of the former Grunitsky ministers (M. Benoît Malou) was given charge of the key ministries of Interior, Information and Press.

The inclusion of civilian ministers of the civilian regime as well as the manner in which the coup was announced and the treatment of members of the former government is enough to suggest that in a certain sense the Togo coup had certain original traits. According to Col. Eyadema, he and the former president had come to an understanding whereby the military took power. Grunitsky was allowed to leave to Dahomey, from which he went to Paris.

The original tussle in the post-independence years started after the first president, Sylvanus Olympio, was murdered by mutinous soldiers on January 13, 1963.

(contd.) first) are revealing as to the problems and the pre-occupation of the military leaders.

During Olympio's rule there had been some trouble caused mainly by his government's action taken to invalidate joint opposition attempts to put up candidates at the 1961 presidential elections, and to ban one party , the JUVENTO , and arrest its leaders. Grunitsky, leader of the other main opposition party (the union Democratique des Populations Togolaises), had gone into exile in Dahomey.

The flashpoint that caused the demise of Olympio and his regime was a mutiny caused by armed forces mainly composed of ex-servicemen who had demanded to be allowed to join the Togolese army. Olympio had refused this on the grounds that expansion of the armed forces would impose an intolerable financial burden on the country.¹ On January¹³, 1963 an "insurgency committee" of the armed forces announced that it had requested Grunitsky and Antoine Metchi (his ally in exile and leader of the Unions des Chefs et des populations du

1. The size of the Togolese army then was estimated at 400 men. The ex-servicemen numbered up to 1,000 men.

Nord, a body, affiliated to Grunitsky's party) to return from exile and form a government. Grunitsky returned to form a provisional civilian government with a main task to prepare "free elections". The military leaders declined his offer to take office in the cabinet but declared that the civil authority, set up at their request, must be a democratic government "respecting all freedom of thought, belief and opinion."

Grunitsky announced that the armed forces would be expanded by the raising of a second infantry company in the immediate future and the formation of a battalion at a later date.¹ He also announced the raising of the ban on the Opposition parties imposed by Olympio's government, general amnesty, and a 40-hour work.

On May 5, 1963 Grunitsky was elected president and Antoine Meatchi vice-president for a five year term, under a new constitution. This took place after a series of round table conferences were held since February between delegates from the four main

1. The armed forces at the time of the last coup consisted of an army of 1200 men, a navy of 250 men a gendarmerie of 1,000 and a police force of about 300.

parties and representatives of the army's "committee of vigilance". The parties agreed on April 16 to nominate Grunitsky as sole presidential candidate with Meatchi as candidate for the vice-presidency. Agreement was reached on a new constitution which was approved by a national referendum at the same time as the presidential election. Elections for the national assembly were also held concurrently on the basis of a single 'National Union' list which had been put forward by the four parties. The allocation of places on the joint list for the national assembly election had led to a dispute between the CUT party (comite de l'Unite Togolais, i.e. Olympio's party) which claimed the right to half of the seats and its three partners, who insisted that the seats should be divided equally between all four parties. CUT leaders threatened to boycott the election if their demands were not met. They were arrested the following day. Grunitsky presented his new government at the national assembly on May 16. He retained the portfolio for defence and interior, while the vice president retained portfolio for finance and for the ministry of economics and planning.

Grunitsky's government was subjected to ceaseless attacks from the very beginning. The first issue in which it was seriously taken to task, mainly by

by the CUT leaders was on its failure to open judicial inquiry into the former president's death. They pressed their claims further by demanding general elections. Grunitsky answered by imprisoning some of the CUT leaders. The two years (1964-66) of Grunitsky's regime were marked by plots or charges of such threats. In early January of 1965, eight military leaders, most of them ~~losing~~^{be} from the Moba tribe of northern Togo were arrested on charges of plotting to overthrow the government. There was a mutiny which followed in July of the same year. But the most serious attempt took place on November 20-21, 1966, after Grunitsky's regime had faced dissention in the cabinet, and several thousand people demonstrated in the streets of Lome, the capital. An attempt to seize power by CUT leaders failed when Col. Eyadema and his army remained loyal to Grunitsky. Grunitsky then dismissed the whole cabinet and formed a new government, and ~~in~~ shortly after, secured from the National Assembly the abolition of the office of vice-presidency.¹

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1. The vice-president was involved in the dissention and on Grunitsky's absence, had threatened to use his temporary powers as acting president, to dismiss the ministers holding opposed views. Grunitsky's reason for the abolition of the office was that "a two-headed executive was unsuited to Africa."

But solution to instability and continual strife was nowhere in the horizon. Grunitsky reshuffled his cabinet within the same month, and things had practically come to a standstill when Col. Eyadema intervened. Eyadema later abandoned the national conciliation committee and on April 14, 1967 formed a new government. He dissolved the Committee and he himself presided over a new government consisting of four military men and eight civilians. He assumed the presidency and retained the portfolio for defence, while another military colleague was in charge of interior. He promised, as they all do, that as soon as peace and reconciliation had been achieved the army would surrender all its power to civilian authority.¹

Reconciliations, however, were not easy to come by, in Togo, as elsewhere in Africa. One of the ironic facts about present day African politics is that civilian political leaders cannot grow above their differences to unite even in the face of a "common enemy", which shows that their "differences" must be predominantly connected^{with, or} have a great deal to do with personal ambition,

1. cf. Le Monde, 15 April 1967.

more than any other issue. The situation in Dahomey was very similar to that in Togo, before the coups took place in both countries. The government of the first president of Dahomey, Hubert Maga, was deposed by the military in 1963 and replaced by another civilian government, with Migan Apithy as president and Ahomadegbe as prime minister. After continual friction between these two and their factions, Ahomadegbe dismissed Apithy in November 1965, only to be deposed by himself on December 2, by the army under Col. Sogbo, the chief of staff.¹ Each ~~coup~~ military coup has its own peculiar traits based on local conditions. But all coup leaders,

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1. The coup in Dahomey was followed in quick succession by a coup in the Central African Republic (Jan. 1, 1966) where the government of David Dacko was overthrown by Col. Bokassa; and in the Upper Volta (Jan. 4th 1966) where the government of Maurice Yameogo was overthrown by Col. Lamizana. In Burundi, after some cabinet instability and the murder of two prime ministers and the execution of many political leaders for alleged plots in the course of three years, the King (Mwambutsa V) was deposed by his son, 19 year old prince Charles Ndizoye with the connivance of the military, on July 8, 1966. The prince acceded to his father's throne under the name of Mwami Ntare V and appointed Captail Michel Micombero, the minister of defence, as prime minister. On November 29th, 1966, Captain Micombero deposed the new king, and he himself assumed presidential powers. This did not come as a surprise, not even, perhaps, to the young king who was on a state visit to the Congo and who commented with what must surely go down as the understatement of the year, that Captain Micombero was "discourteous"!

as already stated charge the governments they deposed with either corruption, inefficiency, nepotism, inability to deal with economic and/or political crises or with any one of these or a combination of all. In the Togolese situation, as in the Dahomeyan situation, civilian internicine conflict eclipsed all other factors and facilitated a military takeover.

Chapter Nine

The Military as an Executive

Some writers make a distinction between military regimes and regimes of military provenance. The latter comprise all regimes that succeed a military intervention, mostly with a civilian government or with a civilian dominated government. The government of the Fifth Republic of France is classed by these writers under a regime of military provenance.¹ Military regimes, on the other hand, are "regimes in which the civilian authorities act wholly or in major part under the covert direction of the military leadership, or alternatively, where the military govern directly in their own name."² The present regimes in the African states where successful military coups have taken place within the past two years, fall ^{under} in this definition. The validity of including the government of the Fifth Republic in regimes of military provenance may be questioned, but the definition of the military regime given here may be taken as a valid frame of reference.

1. cf. S.F. Finer, 'The Military Disengagement from Politics', in the Politics of Demilitarisation, loc. cit, pp.1-10, at p.1.

2. ibid.

Here, it may be reiterated that all military regimes start by declaring their transitional nature: that they have come "to put the house in order", "to conduct a mopping up operation", and that as soon as peace and stability has been achieved (or whatever mission they assigned themselves) they would surrender all power to a civilian government. So far, no military regime has surrendered power of its own accord. The only military regime which has surrendered power to a civilian government (in the Sudan) has done so after a civilian uprising. In the meantime the military are ruling, in several African states. An examination of the structure of the executive under a military regime is therefore relevant to the present study.

The Structure of the military Executive

The characteristic feature of the military executive is the complete concentration of governmental power in its hands and its direct supervision of critical sectors of the government administration. All military executives are, in essence, the same, whatever the variety of extra-military means they use as instruments of control as local conditions may demand. In this

chapter we will examine significant aspects of the military executive through selective examples, and thereby offer some comments on trends and prospects, in general. The three states chosen for the purpose of this chapter are Algeria, Congo (K) and Ghana. The fact that these states were former French, Belgian and British possessions respectively is purely accidental. The reason for their choice is related to the nature of the change brought about by the coup in each state: in Algeria, the coup leaders declared their opposition to Ben Bella and that they were carrying on the revolution; in ^{the} Congo, Mobutu intervened to put an end to endemic political strife without basic constitutional change at the outset but later made some basic changes. In Ghana, the coup leaders set out not only to depose one man and his colleagues, but to bring about complete ^{re}versal of his policies.

Whatever the basic orientation of a military regime, one important fact of psychology impinges upon the organisation of power under it: it is or is perceived generally as being more coercive than any civilian regime. The presence of the soldier is felt in all important sectors of public life. Nevertheless the military leaders are conscious of their limitations and

invariably persuade some civilian leaders to give them support or to collaborate with them even at the executive level. Their declaration that they would hand over power to civilian rule and their pre-occupation with legitimacy may be seen, at best, as a genuine desire to return government to its rightful claimants; i.e. representatives of the people; or at worst, as the compliment reluctantly paid by Might to Right. It is an aspect of the limitations of Might. It is essential to understand this limitation in order to appreciate the structure of military regimes and the actions of their leaders.

(a) Algeria

The proclamation of the Algerian Revolutionary Council vested supreme authority in Algeria after the coup d'etat, in the Revolutionary Council, headed by Col. Boumedienne. Having proclaimed the overthrow of President Ben Bella and his government, the Revolutionary Council persuaded the members of the national assembly to sign a resolution entrusting the

powers of the former president to it. Then, the Council, in its capacity as "head of State", passed three decrees (ordonnances) published on July 13th, 1965, one of which established the organisation of the executive power of the military regime.¹

In the Algerian situation where the Algerian revolution and its instrument, the FLN, was not rejected but was recognised as the source of legitimacy, the transfer of power to the Council also meant that the Council replaced the leadership of the FLN. The Bureau Politique and the central committee of the FLN disappeared - on the face of it, temporarily. The only higher organ of the party which was left to function was the executive secretariat.² The function of the executive secretariat

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1. cf. Ordonnance (i) No. 65-180, of June 22, 1965; (2) No. 65-181, of June 22, 1965; and (3) No. 65-182, of July 10, 1965. The first two were concerned with amnesty and the release of certain categories of prisoners. The third, ordonnance No. 65-182, provided that pending the promulgation of a constitution, the Revolutionary Council was to be the depository of sovereign authority.
 2. cf. Francois Borella, 'Algerie, L'organisation actuelle des pouvoirs, in revue Algerienne des sciences juridiques, politiques et economiques - December 1965, Nos. 3-4, pp.29-39 at p.37.

is not one of decision, but of preparation and execution of decisions taken by the Revolutionary Council. (and previously by the Bureau politique and the secretary-general). In other words, the Council substituted itself for the Bureau and for the secretary-general of ~~the Bureau and for the secretary-general of~~ the FLN, in the function of issuing orders to the party through the executive secretariat. The Council pays lip service to the primacy of the party, as it did during its meeting held from November 15 to 30, 1965 in the following terms: "the party is the first institution of the country, that which exalts and guides the creative power of the people."¹

After he had been instructed to form his government, Col. Boumedienne stated in a broadcast on July 5, that the FLN's task would be "to elaborate and guide, animate and control, and not to conduct or substitute itself for the state". It is not remarkable that the leader of an army coup should be at pains to warn against the party substituting itself for the state, when it is remembered that ~~that~~ was precisely what the

1. cf. El Moujahid, Dec. 2, 1965.

army did itself, albeit provisionally. It must thus seeⁱⁿ the FLN ~~as~~ an alternative source of state authority. The fact of paying lip service to the party as a source of legitimacy is distinguished from its being the source of authority which is now plainly in the army. It is therefore reasonable to question the authenticity of this tribute to legitimacy, though it manifests the limitations of the army as a power-holder.

Boumedienne's cabinet was announced on July 10, 1965. It was a broad-based civilian government in contrast to the military-dominated Revolutionary Council.¹ The cabinet consisted of nine members of the outgoing cabinet, three former ministers who had resigned from the BenBella cabinet (Rabah Bitat, Ahmed Medagri, and Ahmed Kaid), and eight newcomers. Six of the nine members of the former cabinet retained their posts. Col. Boumedienne was chairman of the cabinet as well as of the Revolutionary Council. It may be concluded from this that the head of the government is also the head of state. Diplomatic practice since then supports this view; all ambassadors have been received by Col. Boumedienne.²

1. Out of the 26 members of the Council, 15 were military men.

2. cf. P. Borella, op.cit. p.37. Col. Boumedienne is generally referred to as president.

Ordonnance no. 65-182 provides that the government, by delegation from the Revolutionary Council "holds power necessary for the functioning of the organs of the state and for the life of the nation."¹ It is further provided that "the measures taken by the government are taken according^{to} the subject matter under the form of ordonnances and decrets".²

This means that the government has been entrusted with legislative as well as executive powers. "Ordonnance" in its use in French constitutional law and under the brief period of constitutional convention in Algeria, is used to signify a legislative meaning. One difficulty here was the interpolation of the phrase "according to the subject matter" (selon la matière). The 1963 constitution of Algeria unlike most constitutions of Francophonic states did not provide for a list of legislative matters,

1. Art. 5.

2. Art. 6. The term decree in English represents the two terms i.e. ordonnances and decrets, which are sometimes used interchangeably.

as distinguished from regulatory matters. One way out of the difficulty is to state that any matter which, before July 10, 1965, had been dealt with by a law (une loi) or by an "ordonnance", is a legislative matter; and any matter otherwise dealt with is regulatory matter.¹ All the ordonnances issued by the head of the government (in council of ministers) since July 10, 1965 are legislative acts.

The government is subordinate to the Revolutionary Council, under whose authority and control it exercises its functions. The total or partial reshuffle of the Cabinet is decided by the Council under an Ordonnance (par voie d'une ordonnance conciliaire).² The ministers are individually responsible to the head of the government and the cabinet is collectively responsible to the Revolutionary Council. As to

1. F. Borella, has suggested this, op.cit. p.38.

2. Art. 3, Orden.No. 65-182. The term Ordonnance-conciliaire is used with the suffix "conciliaire" in distinction from one without such suffix which originates from the cabinet.

individual responsibility, this gives the head of the government power to dismiss a minister individually and thus maintain discipline, although his replacement by another is apparently a matter for the Revolutionary Council to decide.¹ His chairmanship of the Revolutionary Council facilitates his choice of a new minister. This proves to be practical and is logical in view of what has been said already that he is head of state as well as of government.

As to collective responsibility, the position is obviously different from a parliamentary system under which there are oppositional forces. The role of the Revolutionary Council may be compared more profitably to that of the national assemblies in African presidential systems. The difference is that in the case of the Revolutionary Council it is presided by the chief executive himself which reduces the role of the Council to a "confessional" or an auto-critical one. The point of resemblance emerges in the predominant position of the Chief executive and in the collaborative relationship between the executive and the national

cf. F. Borella, op.cit. p.38.

assembly, which is also the case with the Revolutionary Council and the chief executives' position in it.¹ The "controlling" role of the FLN, to which reference has been made in the declaration of Boumedienne made on July 5, 1965, does not extend to making the government answerable for any acts or omissions. Under the 1963 constitution the FLN had the right to do this. But even if that had not been changed, the post-independence FLN had little vitality left seriously to challenge a military regime, as was explained in the preceding chapter. Control of the FLN had now passed to the military.

The military regime is anxious to preserve the continuity of the policy set out in the Tripoli programme and in the Charter of Algiers.² The role of the FLN is recast as an instrument of the "execution of a coherent policy."³ But how it can discharge this responsibility

1. Another comparison has been made with the assembly government (presumably) of the post-revolution era of the French assembly. cf. F. Borella op.cit p.39.

2. cf. Proclamation of June 19, and July 5, 1965. See also Chapter 8, for a summary of the Tripoli programme.

3. ibid.

is not stated. On the other hand, two key concepts are continually projected: (i) the state must be organised on the basis of respect of "Arab and Islamic values"; and (ii) the citizen must be more civil^c-minded; must develop the cult of the "chose publique", and show seriousness and put up constant effort. Socialism is asserted as part of the historical heritage of the Algerian nation. All this partly explains the paradox of the FLN's position in the context of what is indisputably a military regime. It may also be reasonably assumed that the experiment of the Arab Socialist Union in the UAR must be watched with care in Algeria. The Algerian military leaders must realise that a party embracing the masses is ultimately a necessary source of legitimacy and guarantee ^{of} ~~for~~ success. Without this any regime, whatever its successes in other spheres, is doomed to dependence on brute force, which in the end destroys itself. The indications in Algeria are that the Nasserite experiment will be followed.

(c) The Congo (K)

As already explained in the preceding chapter, the army under Mobutu took over power in Nov. 1965. The High Command of the ANC, under General Mobutu issued a 13-point proclamation, dated Nov. 24, 1965. President Kasavubu was replaced by General Mobutu, and Col. Mulamba was appointed prime minister. But the institutions of the republic were otherwise left intact.¹ In the afternoon of the same day both Houses of Parliament recognised General Mobutu's coup by approving his investiture by acclamation. The constitution was not suspended, but its articles relating to the holding of presidential elections were suspended and the president imposed a "state of exception" (état d'urgence) for five years.²

The president also, by decree, extended the jurisdiction of military courts so as to include, inter alia, cases of corruption, embezzlement etc. He placed the police under military control. The drastic

1. cf. para. 1, 3 and 4 of the Proclamation.

2. Under the constitution of 1964 the president was elected for five years by members of parliament, by the delegates of Leopoldville and the members of the provincial assemblies. He was eligible for re-election for one consecutive term - cf. arts. 55 and 56.

nature of the Congolese coup was thus beginning to emerge gradually.¹ At the outset the Congolese coup had certain traits which distinguished it from the other coups that have taken place in Africa. The principal distinguishing feature was its substantial retention of the constitutional order as it existed before Nov. 24, 1965. The combination of the institutions such as parliament did no doubt help the military regime to muster some civilian support. The move to obtain parliamentary resolution recognising the regime was a proof of this. It was also perhaps a measure of the preoccupation with legitimacy. This is borne out by several statements made by president Mobutu and in particular/ in an official publication under the revealing title "De la légalité à la légitimité".²

President Mobutu appointed Col. Leonard Mulamba prime minister, he himself retaining the defence portfolio. The Mulamba Cabinet (of 21) consisted of

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1. cf. A. Rubens, 'La justice militaire', *Révue juridique du Congo*, jan-feb.-mars, 1966, No. 1, pp.3-12.
 2. Haut Commissariat à l'Information, Congo, Kinsasha 1966. Mobutu argues in this document that his regime was invested with a legitimacy of fact, issuing from the power vacuum existing owing to the political chaos in the previous regime:- "Plutôt que parler d'une prise du pouvoir par l'armée, il faudrait en ce cas saluer la renaissance du pouvoir" (p.13).

CONACO members and of the Congolese Democratic Front.

Each province except one was represented in the Cabinet.¹

The real nature of Mobutu's military regime began to emerge in the new year. Opening a new session of Parliament on March 7, 1966, president Mobutu declared that henceforth parliament shall not debate decrees issued by him; and a presidential decree appeared on the same day vesting legislative powers in the president.² Article 2 of this law provided that all decrees issued by the president would be presented to parliament, for information, within two months of their receiving signature. Since the coup the position up to then had been regulated by a law under which the president could legislate by decree; but any such decree could be annulled by the parliament.³ Now the president took complete legislative initiative without parliamentary veto.⁴

1. cf. Ordonnance No. 1 of 24.11.65; No. 2 of 28.11.65 and No. 10 of 7.12.65.

2. Ordonnance No. 66/92 of March 7, 1966.

3. Ordonnance-loi No. 7 of Nov. 30, 1965.

4. These measures are reminiscent of the colonial system. Under the Belgian *Charte Coloniale* (art.22), the central executive had power, by decree, to take measures which fell normally within the domain of law. The *loi fondamentale* of May 19, 1960, which was the basis of the Independence Constitution also retained this power to legislate by decree, with the proviso that parliament could, within six months, reject the decree.

President Mobutu explained this move by saying that the parliamentary deputies were not in accord with some of his governments' policies, or as he put it: "unfortunately some of those who still depended on colonialists did not like our progressiveness." I had therefore to assume legislative power."¹

This move towards more power to ^{rule} ~~rule~~ by decree was perhaps logical in view of the nature of a military regime which has not yet consolidated its power. This is more natural in a country with the political history and geography of the Congo. The move towards more power was also reflected in the decision (on October 26, 1966) which president Mobutu reached to abolish the office of the prime minister and assume the post himself. The explanation given by radio Kins^hasa was that a divided executive impeded "fulfilment of the task of national reconstruction". At the same time the cabinet was reduced from 21 to 17, eight ministers were dropped from the new list, five ministers changed portfolios and four new ministers were appointed.

President Mobutu announced a number of far-reaching measures in the direction of strengthening central authority and also affecting industrial and

1. Le Monde, Sept. 3, 1966.

commercial interests. A decree was issued on April 10, 1967, affecting the territorial, administrative and political structure of the provinces.¹ The provincial autonomy that has existed hitherto was drastically curtailed. A governor is appointed by the president to each province, who was a representative of the central government and directly responsible to the minister of interior and to the other ministers on matters involving their ministries.² The provincial assemblies, were reduced to provincial councils (to be directly elected) with advisory functions.³

Meanwhile a draft constitution was prepared and president Mobutu explained its nature and object in a message to the people given in April 7, 1967. After

1. Ordonnance No. 67-177, April 10, 1967.

2. Art. 5 Ordonnance 67-177. Before the decree was issued, new governors had been sworn in for the newly reduced eight provinces. The new governors who were career civil servants and state employees were required to serve in provinces other than the place of their origin, a measure designed to ensure loyalty to the central government perhaps as well as impartiality.

3. art. 11, *ibid.*

reminding the Congolese people of the evils of the previous regime and expressing satisfaction of progress made since the coup and of the popular support his regime received as manifested in their reception during a recent presidential tour, he stated that the progress of the "revolution" must obtain a legal foundation. "The second republic" he now declared "must create a new order, find new centres (of power) and lay the new foundations necessary for the direction of public affairs." President Mobutu now began to speak about "La Révolution" whereas before he was content to step into Kasavubu's presidential chair (though he proved to be a more competent president) without disturbing the constitutional structure. Now he spoke of the second Republic; and whereas before he spoke of the legitimacy of fact (légitimité de fait), he now announced that "the revolution implies the creation of a new order the validity of which is founded...on a legal order acceptable to the majority. This means that we must transform into law today's fact unanimously admitted by the mass of peasants and urban dwellers."¹ The proposed constitution follows

1. Cf. *Études Congolaises* Mars.-Av. 1967 pp.65-92.

in the line of African presidentialism. There will be a military executive, a unicameral national assembly and a unitary state. The president will be elected by universal suffrage and will have extensive powers including emergency powers.¹ and the right to refer a matter for popular referendum in case of dispute with the national assembly.²

The Congo has travelled a long way since the crisis occurred following immediately after independence, as Mobutu's regime proudly claims. But the direction of constitutional development is only just beginning to emerge with any degree of clarity. The presence of rich mineral resources has made it an area of intrigue, at an international level and this, plus the dispute between the Congolese government and Union Minière will undoubtedly affect the nature of the future government of the Congo. One opinion may be hazarded as to the line of direction to be followed by Mobutu's regime. Mobutu seems to be influenced by the idea of a popular movement as a basis for a military regime converted along the Egyptian model. He recently established a new

1. Art. 54, Draft Constitution.

2. Art. 29, Draft Constitution.

party the nature and organisation of which is as yet not known. On the other hand, he talks of a two party system ^{as} ~~to~~ he did in his message introducing the draft constitution. If he believes in this, then it is a contradiction to the African presidentialism in terms of which he conceived the draft constitution. This apparent contradiction reveals the state of indecision on the choice of systems which military regimes seem to face. This perhaps stems from a lack of conviction on the part of some military leaders that ~~an~~^{only} one type of civilian constitutional system can effectively replace them.

(c) Ghana

The Ghana military regime is different from the Algerian regime in that it not only abolished the constitutional structure of the previous regime but purported to install an entirely opposed regime in its place. On February 26, 1966, two days after the coup, a Proclamation was issued by the Congo leaders, establishing the National Liberation Council (NLC) "for the administration of Ghana and for the matters connected thereto." The Proclamation, inter alia,

suspended the constitution of Ghana, 1960, and all amendments thereto.¹ The national assembly was dissolved, political parties were banned, and all the members of the previous government were dismissed.

The NLC consisted of eight members including the chairman, general Joseph Ankrah, and the deputy chairman, police commissioner Harlley.² The members were named by the Proclamation as amended by Decree issued later.³

The NLC assumed supreme power; legislative and executive powers were vested in it. It was empowered to legislate by decree until a new constitution was promulgated and a new government based thereon is formed.⁴ Para. 3(3) of the Proclamation provides that in case of inconsistency between existing laws of Ghana which remain in force and the provisions of any NLC decree, the latter shall prevail.

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1. Para. 2 of the Proclamation.
 2. Its composition was evenly divided between the army and the police.
 3. Para 1, Proclamation, and Decree No. 1 of March 1, 1966.
 4. Para 3 of Proclamation, as amended by Decree No. 1. All the Decrees issued by the NLC shall be referred hereafter as NLCD.

Executive power was retained by the NLC. But the removal of the whole Nkrumah cabinet had left a vacuum which could not be filled by the NLC itself. Consequently the NLC passed the Ministers Functions (Delegation) Decree, 1966,¹ authorising principal secretaries to exercise ministerial function, while the NLC retained supervisory control. Thus the role of the civil servant assumed great significance immediately after the coup. The magnitude of the work and the comparative lack of experience of the army officers in ministerial functions compelled the passing of NLCD 11 placing civil servants in ministerial positions. It has often been written that civil servants and the military make better "partners" in view of their professional and organisational approach to things. Such a belief presumes that civil servants and army officers are apolitical, concerned only with the administrative and technical side of things, which is a questionable presumption. At any rate, the arrangement in Ghana soon proved unsatisfactory. In spite of NLCD.11 and the reasons behind it, it was clear that the NLC, unlike the

1. NLCD.11.

Revolutionary Council in Algeria, retained closer supervisory and directive link, and soon decided it must assume full executive function. NLCD.11 was abolished and the NLC divided up the ministries among its members.¹ The NLC proclamation was amended on November 15, 1966 to include the provision that the NLC may appoint any one of its members to exercise any of the executive powers of the state and to take charge, under its direction, such departments of state as it may assign to him.²

The power of appointment and ~~dismissal~~^{dismissal} is in the hands of the NLC in all respects, including judicial and civil service posts. As to judicial appointment,

1. NLCD.67 of June 25, 1966. Seventeen ministries were divided among the seven members of the NLC, including the vice-chairman, Mr. Harlley, who held the portfolio for Interior, External Affairs, Information and Secretariat of Departments under the NLC. Defence was held by General Kotoka, and, general Ankrah remained as Chairman, but assumed command of the armed forces, upon Kotoka's death.

2. NLCD. 104, para. 1(a)

the Judicial Service Act 1960 was amended, reintroducing the judicial service commission which had been abolished previously. The Judicial Service Commission is appointed by the NLC. Initially it was to consist of seven members, including the chief justice.¹ This was changed later. The Commission now consists of (1) the Chief Justice, (2) the other justices of the supreme court, (3) other judges and magistrates and the judicial secretary, (4) the persons holding posts created under any other enactment, being designated by law as judicial service posts.² Judges are to be removable on the advice of the Judicial Service Commission; on the grounds of "stated misbehaviour or infirmity of body or mind".³ The role of the Commission is advisory; the NLC is not bound to act on any of its advice.

In September and October of 1966, the NLC announced the reduction of the number of judges from 36 to 29 and 16 of the former judges including Mr. Sarkodee-Adoo, the Chief Justice since February 1964, were

1. Judicial Service Act (Amendment) Act, 1966, NLCD. 39.

2. NLCD. 83, 1966.

3. NLCD.39 parag. 1(5)

dismissed. In his place, Mr. Akafu-Adoo was sworn in. He had been dismissed by president Nkrumah in February 1964 from his post as judge of the Supreme court.

The military regime also dismissed a large number of local magistrates alleging that they were unqualified, inefficient~~y~~ or corrupt. Similarly, chiefs dismissed by Nkrumah were restored and 194 paramount chiefs appointed by Nkrumah were reduced to their former status.¹ All this could be interpreted as being part of a purge or a "mopping up operation" - of removing all vestiges of support for the previous regime, and consolidating the new regime.

As to civil service appointments, the civil service commission which had been abolished, was re-introduced, and with it, the persons who were members of the commission were reinstated for the remaining parts of their term with effect from the time immediately before the commission was dissolved.² It is indicative of the view taken by the military leaders as to the role of the

1. cf. NLCD.112.

2. NLCD. 17, parag. 3(2)

various institutions under the previous regime (as well as under their own) that they "purged" the judiciary and dismissed the members of parliament, while they left the civil service. An observer has written in this regard as follows:-

"At no point was the civil service purged..The NLC installed officials from the Flagstaff House cabinet secretariat who were known for their ability and were least involved in policy-making under the older regime. (The two most senior held-overs were given respectable but less sensitive positions elsewhere). It also brought in a ~~group~~ of competent advisers from the ministries, who have added to the air of professionalism now evident in policy-making at the top."¹

The NLC also appointed various committees to advise it in discharging its function such as notably at the outset the political committee,² and the administrative committee.³ The political committee was initially presided by the present Chief Justice, and had twenty-three members, most of whom were prominent opposition leaders such as Dr. Busia (who was deputy chairman) and Mr. Joe Appiah. The committee also contained representatives of all eight regions of Ghana and of the

1. W. Scott Thomson, 'New Directions in Ghana', in Africa Report, Nov. 1966, p.18.

2. NLCD.59 June 14, 1966.

3. NLCD 31.

various interests of the community. Its function was to advise the NLC on any policy, decisions made or enactments passed since the coup. It reported weekly to the NLC in fulfilment of such function.¹

The administrative committee was appointed to advise the NLC on all matters relating to central and local government administration. It was required to work in close consultation with the political committee advising on the political implications of NLC's decisions. It can make recommendations in respect of the machinery for the implementation of executive decisions and the general organisation of the ministries and departments.

In matters of local government the NLC has made some drastic changes. The Local government (Interim Administration) Decree, 1966 - NLCD 26, amended the Local Government Act 1961 to allow for the establishment of management Committees, which are made up of central and local government personnel. These committees have assumed the functions of the elected local councils under the 1961 Act.²

1. cf. West Africa Feb. 25, 1966.

2. cf. parag. 3, of the Decree.

The general orientation of the Ghana military regime seemed to be in a direction diametrically opposed to that of the previous government. For example, General Ankrah announced a "new liberal economy" in which active state participation would be limited to certain key basic projects and the private sector would remain "the largest sector in terms of number of persons employed and gross output."¹ In external policy, Dr. Nkrumah's dedication to the struggle for the total liberation of Africa and African unity was to be revised, or, as General Ankrah put it "would be placed in a proper perspective."²

In internal politics, the NLC appears to be moving towards civilian rule. A constitutional commission was set up and started its work in the Summer of 1966. The numerous committees which were set up (some fifteen in all) to purge the old regime and to advise the new one have mostly finished their work. The principal object of the military regime in setting up these committees was to reconstruct the whole government machinery according to a different philosophy. The

1. Statement of March 12, 1966.

2. *ibid.*

constitutional commission was entrusted with the task of devising a constitution wherein power would be divided or distributed to avoid its concentration in the hand of one man. At the same time Kwame Nkrumah's achievement of a unified central administration has been adopted and continued. Ghana is to continue as a unitary republic and the division of the regions would continue as before the coup.¹

As for a move to civilian rule, the political committee was one step in that direction. The establishment of the constitutional commission to prepare a constitution and the appointment, this year, of Civilian Special Commissioners to be in charge of administering the ministries can only be described as signs of a policy of demilitarisation. The Special Commissioners will have full responsibility for administering the ministries assigned to them subject to the overriding national policy as laid down by the NLC. But the portfolios distributed to fourteen civilian special commissioners do not include the key ministries of Defence which is still headed by General Ankrah; Interior

1. cf. NLCD.73.

and External Affairs retained by Mr. Harlley, the deputy chairman of the NLC; and Finance held by Brigadier Afrifa.

A national advisory committee is also established to act as a general "clearing house" for the special commissioners, and all the standing committees, save four, have now been abolished. The remaining four are the economic committee, administrative committee, logistics committee and the expediting committee. The Ghana regime in demolishing the previous constitutional and administrative machine was faced with a complex set of political and administrative problems which compelled the creation of committees and more supervisory machinery. Thus the expediting committee was charged with the duty of making frequent and unannounced visits to public offices, of receiving and investigating complaints from any member of the public and of following up decisions of the NLC and ensuring their due execution.¹

1. cf. NLCD.99 parag. 3(a) (b) and (c)

The special commissioners will obviously have more power than the principal secretaries had. They are also expected to be more bold and imaginative. The Ghanaian Times has warned them to "insulate" themselves against "the temptation to lean too heavily on the advice of civil servants", and advised them to be prepared "to analyse critically red-tape ideas and initiate practical policies that are original and suited to our times." That the military regime is treading with caution is shown not only by their retention of key ministries but also by their decision to establish a national centre for civic education to be headed by Dr. Busia. Among the tasks of this centre is the important one to mobilise the citizens behind the regime and to take an active part in the government of the country, presumably with a view to preparing them to civilian rule.

The NLC is ⁱⁿ a dilemma. Its members have declared that they were not inspired by personal ambition and that they would hand over to civilians soon. On the other hand, there ~~are~~, as yet, no political parties and no civilian political leaders of Nkrumah's stature who can take over power from the NLC. One weekly which is

anti-Nkrumah and pro-NLC has put the matter thus:

"One of Ghana's great problems is that no civilian political leaders have appeared, the great majority of CPP leaders are totally discredited, and the opposition generation represented by Dr. Buria, is unlikely to arouse popular enthusiasm. That is why it is suggested that under a civilian regime General Ankrah himself might become president, or that young soldiers, such as Col. Afrira might stand office. In spite of criticisms of the present regime...nobody would dispute that Ghana would be much better off under continued NLC rule rather than under a weak and unpopular civilian government."¹

This indeed is the dilemma facing the NLC as all military regimes, assuming that they wish to demilitarise the regime, which is taking^a sanguine view of human nature. Those who do not take such view, or who see too much in terms of a Latin American parallel have concluded that an era of pronunciamientos has begun in Africa.

1. West Africa, Feb. 25, 1967.

Conclusion

The suggestion bluntly made by "West Africa" that general Ankrah might become president under a civilian rule in Ghana holds the clue to the post-coup problems. Even military men who genuinely started with the idea of a "clean up" and handing over to civilians in the end, tend to linger on/in office. Political power has its own occupational hazards and self-perpetuation in/office is the prescription against such hazard. This is true of one-party as of military regimes. The original purpose can get lost easily in the maze of daily pre-occupations. Whether the military set out ~~to~~ simply ~~the~~ to displace civilian leaders without basic change of structure (as in Algeria, or whether they start to dismantle the whole system)as in Ghana) the problems of disengagement arise inevitably. One authority on the subject has written: "the key to the difficulties lies in that displacement or substitution implies the displacement/of, or substitution for, a particular social and/or political grouping (e.g. Personists, the CPP, the landlords, etc) and is made....in the name of a particular military conception of the national interest, which

definitionally, is opposed to that of the groups they have ejected and/or replaced."¹

Every military regime thus fears the return of the people it has replaced or the reinstatement of the principles and policies it has reversed, as must be the case with most of the military regimes in Africa. Nor is this the main source of threat. There is a real fear of counter-coup from within the military itself for whatever reason or pretext. There may be "young Turks" who demand more radical politics. Or there may be sympathisers with the previous regime, as was ^{possibly} the case in the abortive counter-coup in Ghana.

These difficulties (largely) determine the post-coup behaviour of military leaders. In Ghana the shock of the attempted counter-coup, in which the architect of the first coup was killed, seems to have driven the regime to make more energetic gestures of demilitarisation as the appointment of the civilian special commissioners shows. Other regimes may be attracted by the example of the Nasserite experiment.

1. S.E. Finer, op.cit. p.2.

If the UAR example is emulated it raises the problem of evolving a genuine political party and an acceptable leadership. The Algerian regime has laid emphasis on local communes as a basis of support. But even there, the FLN acted as a Trojan Horse, without producing much enthusiasm from the population. In countries like Ghana where the dominant party has been proscribed, and there is no alternative party this problem is more acute. In the Congo, president Mobutu's cautious experiment ~~with~~ in creating his own party, the MPRC, shows an inclination towards the UAR type of solution. But there is as yet no true foundation for its successful operation. And this is the problem facing most military regimes. This problem limits the political freedom of the military leaders and causes them to lose initiative and control, drifting to a situation where they finally lose out to the politicians. The course of politics in such a situation is not always predictable; but one thing is clear, if they drift and continue to rule without much betterment in the condition of life of the people, there will be other coups or civilian uprisings.

The military by taking a direct control of government have lost their neutrality and political "innocence", and will be now directly responsible for any mess that is created. Success, in their case, is of more importance. The slightest gossip of corruption, ^{or} inefficiency is more likely to harm their image than it would a civilian regime, because they abandoned their neutral position, broke legality in order to put an end to such evil. They must not only be honest and efficient but they must be seen to be so. Above all they must create the right conditions for disengagement. The UAR model is one possibility to be used with the necessary adaptations to suit local conditions. In states where the one party system was made to be synonymous with misrule and one of the reasons for intervention, the military leaders may have a prejudice against such an experiment. But those who have the interest of their nations at heart - and there are many such - should be reminded that whatever mistakes the past regime made, they must not allow themselves to be driven to make similar mistakes in the opposite direction. The problems need to be re-examined with depth and vision,

always
~~anybody~~ bearing in mind the interests of the people.
Let there be devices against abuse of power, by all means. But experience has shown that divided power can be ineffective and a source of disunity and therefore more strife. This would mean more coups and counter-coups which will reduce politics in the African continent to a game of musical chairs. The people of Africa, as indeed all other people, do not deserve such a fate.

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